

House Bill 98 (AS PASSED HOUSE AND SENATE)

By: Representatives Coomer of the 14<sup>th</sup>, Caldwell of the 131<sup>st</sup>, Atwood of the 179<sup>th</sup>, Meadows of the 5<sup>th</sup>, Holcomb of the 81<sup>st</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 2 of Title 38 of the Official Code of Georgia Annotated, relating to  
2 military affairs, so as to repeal and reenact Article 5, the "Georgia Code of Military Justice";  
3 to provide for a short title; to provide for definitions; to reorganize the Code to match the  
4 numbering of the applicable provisions of the federal Code; to provide new rules for the  
5 appointment of a State Judge Advocate; to establish jurisdiction over any member on Title  
6 32 of the United States Code orders and provide for prosecutions by civilian or military  
7 authorities based on the nature of the offense charged; to create the Office of the State Judge  
8 Advocate, provide for qualifications, and appointment of other judge advocates; to establish  
9 authority for arresting people who are subject to the article, provide for limitations, and allow  
10 for delivering people to civilian authorities for arrest; to create nonjudicial punishment; to  
11 establish general, special, and summary courts martial and the punishment each may impose;  
12 to create the procedural rules for courts martial, including convening the court, appointing  
13 trial and defense counsel, investigating the charges, pretrial confinement, findings of guilt  
14 or innocence, and every other aspect of the trial; to establish post-trial procedure, including  
15 clemency review, motions for new trial, and appellate review; to provide for punishments;  
16 to establish courts of inquiry for general investigations of noncriminal incidents; to designate  
17 who may administer oaths; to allow for appointment of marshals; to provide for training; to  
18 create a process for subordinates to make complaints against superiors; to provide for the  
19 authority of the Adjutant General to issue other written discipline to subordinates; to create  
20 boards of inquiry to review civilian complaints of unlawful takings by the state militia; to  
21 provide for the Governor to delegate certain authority; to provide for the use of funds; to  
22 establish the process for collection of fines; to provide for the purpose of the article; to  
23 provide for immunity for official acts of military members and civilian employees of guard;  
24 to provide for an effective date and applicability; to repeal conflicting laws; and for other  
25 purposes.

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

27 **SECTION 1.**

28 Chapter 2 of Title 38 of the Official Code of Georgia Annotated, relating to military affairs,  
 29 is amended by repealing in its entirety Article 5, the "Georgia Code of Military Justice," and  
 30 enacting a new article to read as follows:

31 "ARTICLE 532 Part 133 38-2-1000.34 This article shall be known and may be cited as the 'Georgia Code of Military Justice.'35 38-2-1001.36 As used in this article, the term:

37 (1) 'Accuser' means a person who signs and swears to charges, directs that charges  
 38 nominally be signed and sworn to by another, or has an interest other than an official  
 39 interest in the prosecution of the accused.

40 (2) 'Another state' means any one of the several states of the United States, the District  
 41 of Columbia, the Commonwealth of Puerto Rico, Guam, and the United States Virgin  
 42 Islands.

43 (3) 'Apprehension' means the taking of a person into custody.

44 (4) 'Arrest' means the restraint of a person by oral or written order that is not imposed as  
 45 punishment and that directs such person to remain within specified limits.

46 (5) 'Arrest in quarters' means a punishment requiring a person to remain within his or her  
 47 military residence, whether a tent, stateroom, or other quarters assigned, or a private  
 48 residence when government quarters have not been provided during the period of  
 49 punishment.

50 (6) 'Cadet,' 'candidate,' or 'midshipman' means a person enrolled in or attending a  
 51 military academy, regional training institute, or any other formal education program for  
 52 the purpose of becoming a commissioned officer in the organized militia.

53 (7) 'Classified information' means any information or material that has been determined  
 54 by an official of the United States or of another state, pursuant to law, an executive order,  
 55 or regulation, to require protection against unauthorized disclosure for reasons of national  
 56 or state security.

57 (8) 'Commander' means:

58 (A) A commissioned officer of the organized militia who is in command or who is in  
 59 charge;

60 (B) The Governor; or

61 (C) The adjutant general.

62 (9) 'Commanding officer' means a commander.

63 (10) 'Confinement' means physical restraint imposed by order of competent authority  
64 depriving a person of freedom.

65 (11) 'Convening authority' means the person convening the court, a successor in office,  
66 or an authorized designee of the person or successor.

67 (12) 'Enlisted member' means a person in an enlisted grade.

68 (13) 'Judge advocate' means an individual who is certified or designated as such by the  
69 Judge Advocate General of the United States Army or Air Force or certified by the state  
70 judge advocate as competent to perform such military justice duties required by this  
71 article. Such individual shall be a commissioned officer of the organized militia.

72 (14) 'Military court' means a court-martial or court of inquiry.

73 (15) 'Military judge' means an official of a general or special court-martial detailed by  
74 the convening authority.

75 (16) 'Organized militia' means the National Guard of this state as provided for by Title  
76 32 of the United States Code, the Georgia Naval Militia, and any other military force  
77 organized under the constitution and laws of this state when not in a status subjecting  
78 such force or forces to exclusive jurisdiction under Chapter 47 of Title 10 of the United  
79 States Code.

80 (17) 'Record,' when used in connection with the proceedings of a court-martial, means:

81 (A) An official written transcript, written summary, or other writing relating to the  
82 proceedings; or

83 (B) An official audiotape, videotape, digital image or file, or similar material from  
84 which sound, or sound and visual images, depicting the proceedings may be  
85 reproduced.

86 (18) 'Senior force commander' means the assistant adjutant general for army, the  
87 assistant adjutant general for air, or the brigadier general in charge of the State Defense  
88 Force.

89 (19) 'Superior commissioned officer' means a commissioned officer superior in rank or  
90 command.

91 38-2-1002.

92 (a) This article shall apply to all members of the organized militia at all times and in all  
93 places when not serving as provided for by Title 10 of the United States Code.

94 (b)(1) Subject matter jurisdiction under this article shall be established if a nexus exists  
95 between an offense set forth in Part 10 of this article, except as provided in Code Section  
96 38-2-1111 or 38-2-1112.1, and the organized militia. When a member is in a status as

97 provided for by Title 32 of the United States Code or on state active duty, a rebuttable  
 98 presumption exists that such nexus is established. As used in this paragraph, the term  
 99 'state active duty' means full-time duty in the organized militia under an order of the  
 100 Governor or otherwise issued by authority of law and paid by funds of this state,  
 101 including travel to and from such duty.

102 (2) Courts-martial shall have primary jurisdiction of an offense set forth in Part 10 of this  
 103 article, except as provided in Code Section 38-2-1111 or 38-2-1112.1.

104 (3) A proper civilian court shall have primary jurisdiction of a nonmilitary offense when  
 105 such act or omission violates both this article and local civilian criminal law, foreign or  
 106 domestic. In such case, a court-martial may be initiated only after the civilian authority  
 107 has declined to prosecute or dismissed such charge; provided, however, that jeopardy has  
 108 not attached.

109 (4) Jurisdiction over attempted crimes, conspiracy crimes, solicitation, and accessory  
 110 crimes shall be determined by the underlying offense.

111 38-2-1003.

112 (a) Each person discharged from the organized militia who is later charged with having  
 113 fraudulently obtained such discharge shall be, subject to Code Section 38-2-1043, subject  
 114 to trial by court-martial on that charge and is, after apprehension, subject to this article  
 115 while in custody under the direction of the organized militia for that trial. Upon conviction  
 116 of such charge, such person shall be subject to trial by court-martial for all offenses under  
 117 this article committed prior to the fraudulent discharge.

118 (b) No person who has deserted from the organized militia shall be relieved from  
 119 amenability to the jurisdiction of this article by virtue of a separation from any later period  
 120 of service.

121 38-2-1004.

122 When calculating forfeiture punishments under this article for nonactive duty members of  
 123 the Georgia National Guard, each unit training assembly shall constitute a day. Otherwise,  
 124 any punishment authorized by this article which is measured in terms of days shall mean  
 125 successive days when served in a status of annual field training and shall mean succeeding  
 126 duty days when served in a status other than annual field training.

127 38-2-1005.

128 (a) This article shall be applicable at all times and in all places, provided that either the  
 129 person subject to this article is in a duty status or, if not in a duty status, that there is a  
 130 nexus between the act or omission constituting an offense under this article and the

131 efficient functioning of the organized militia. Such grant of military jurisdiction shall  
132 neither preclude nor limit civilian jurisdiction over an offense except when the prohibition  
133 of double jeopardy is concerned.

134 (b) Courts-martial and courts of inquiry may be convened and held in units of the  
135 organized militia while those units are serving outside of this state with the same  
136 jurisdiction and powers as to persons subject to this article as if such proceedings were held  
137 inside this state, and offenses committed outside this state may be tried and punished under  
138 this article either inside or outside this state.

139 38-2-1006.

140 (a) The Governor, on the recommendation of the adjutant general, shall appoint an  
141 individual to serve as the state judge advocate. To be eligible for such appointment, such  
142 individual shall be a judge advocate, a member of the State Bar of Georgia in good  
143 standing for not less than ten years, and have not less than five years of continuous service  
144 in the army or air National Guard of this state. The state judge advocate shall serve as the  
145 primary legal advisor to the adjutant general and shall serve as the judge advocate on the  
146 joint staff. The state judge advocate shall supervise the Office of the State Judge Advocate  
147 and shall have authority for assignment, placement, and billeting of all judge advocates.

148 (b) The assistant adjutant general for army, the assistant adjutant general for air, and the  
149 brigadier general in charge of the State Defense Force, on the recommendation of the state  
150 judge advocate, shall each appoint a staff judge advocate for the Army National Guard, a  
151 staff judge advocate for the Air National Guard, and a staff judge advocate for the State  
152 Defense Force, respectively. Such staff judge advocates shall serve as the respective  
153 primary legal advisors to the assistant adjutant general for army, the assistant adjutant  
154 general for air, and the brigadier general in charge of the State Defense Force.

155 (c) The state judge advocate, or his or her assistants, shall make frequent inspections in the  
156 field in supervision of the administration of military justice in the organized militia.

157 (d) Convening authorities shall at all times communicate directly with a judge advocate  
158 in the same military service in matters relating to the administration of military justice.

159 (e) No person who has acted as member, military judge, trial counsel, defense counsel, or  
160 investigating officer, or who has been a witness, in any case may later act in any capacity  
161 in any reviewing authority upon the same case.

Part 2

163 38-2-1007.

164 (a) Any person authorized by this article or Chapter 47 of Title 10 of the United States  
165 Code, or by regulations issued under either, to take persons into custody subject to this  
166 article, any marshal of a court-martial appointed pursuant to the provisions of this article,  
167 and any peace officer or civil officer having authority to take offenders into custody under  
168 the laws of the United States or of another state, may do so upon probable cause that an  
169 offense has been committed and that the person taken into custody committed it.

170 (b) Commissioned officers, warrant officers, petty officers, and noncommissioned officers  
171 shall have authority to quell quarrels, frays, and disorders among persons subject to this  
172 article and to take persons into custody subject to this article who take part therein.

173 (c) If an offender is taken into custody outside this state, the offender's return to this state  
174 shall be in accordance with normal extradition procedures or by reciprocal agreement.

175 (d) No person authorized by this article to take persons into custody subject to this article,  
176 or the place where such offender is confined, restrained, held, or otherwise housed, shall  
177 require payment of any fee or charge for so receiving, apprehending, confining, restraining,  
178 holding, or otherwise housing a person except as otherwise provided by law.

179 38-2-1008.

180 Reserved.

181 38-2-1009.

182 (a) An enlisted member may be ordered into arrest or confinement by any commander in  
183 the grade of O-4 or above by an order, oral or written, delivered in person or through any  
184 other person who is subject to this article. A commander in the grade of O-4 or above may  
185 authorize commissioned officers, warrant officers, petty officers, or noncommissioned  
186 officers to order enlisted members of the commanding officer's command, or subject to the  
187 commanding officer's authority, into arrest or confinement.

188 (b) A commissioned officer, a warrant officer, or a civilian subject to this article or to trial  
189 thereunder may be ordered into arrest or confinement only by a commanding officer in the  
190 grade of O-6 or above to whose authority the person is subject by an order, oral or written,  
191 delivered in person or by another commissioned officer. The authority to order such  
192 persons into arrest or confinement shall not be delegated.

193 (c) No person may be ordered into arrest or confinement except for probable cause.

194 (d) This article shall not limit the authority of persons authorized to apprehend offenders  
195 to secure the custody of an alleged offender until proper authority may be notified.

196 (e) The Governor, or the adjutant general under delegation by the Governor, may by  
197 written order, or regulations issued pursuant to Part 1 of Article 2 of this chapter, further  
198 limit who may order the arrest or confinement of members.

199 38-2-1010.

200 Any person subject to this article who is charged with an offense under this article shall be  
201 ordered into arrest or confinement by the adjutant general, as circumstances may require.  
202 When any person subject to this article is placed in arrest or confinement prior to trial,  
203 immediate steps shall be taken to inform him or her of the specific wrong of which he or  
204 she is accused, and diligent steps shall be taken to try him or her or to dismiss the charges  
205 and release him or her.

206 38-2-1011.

207 Confinement and imprisonment other than in a guard house, whether prior to, during, or  
208 after trial by a military court, shall be executed in jails or correctional institutions  
209 designated by the Governor, or by the adjutant general under delegation by the Governor,  
210 for that purpose.

211 38-2-1012.

212 No member of the organized militia shall be placed in confinement in immediate  
213 association with enemy prisoners.

214 38-2-1013.

215 No person, while being held for trial or awaiting a verdict, shall be subjected to punishment  
216 or penalty other than arrest or confinement upon the charges pending against him or her,  
217 nor shall the arrest or confinement imposed upon such person be any more rigorous than  
218 the circumstances require to insure his or her presence and the safety of others, but he or  
219 she may be subjected to minor punishment during such period for infractions of discipline.  
220 Any person placed in confinement while being held for trial or awaiting a verdict shall be  
221 given administrative credit for such time to offset any sentence subsequently imposed.

222 38-2-1014.

223 (a) A person who is subject to this article and accused of an offense against civil authority  
224 shall be delivered, upon request, to the civil authority for trial or confinement.

225 (b) When delivery under this article is made to any civil authority of a person undergoing  
226 sentence of a court-martial, and the delivery, if followed by conviction in a civil tribunal,  
227 interrupts the execution of the sentence of the court-martial, the offender, after having

228 answered to the civil authorities for the offense, shall, upon the request of competent  
229 military authority, be returned to the place of original custody for the completion of his or  
230 her sentence.

231 Part 3

232 38-2-1015.

233 (a) Under such regulations as may be prescribed by the Governor pursuant to Part 1 of  
234 Article 2 of this chapter, or the adjutant general under delegation by the Governor, any  
235 commanding officer may impose disciplinary punishments for minor offenses without the  
236 intervention of a court-martial pursuant to this Code section. A commanding officer's  
237 authority under this Code section shall not be delegated.

238 (b) As provided for by subsection (a) of this Code section, any commanding officer may  
239 impose upon enlisted members of such commanding officer's command one or more of the  
240 following punishments:

241 (1) An admonition;

242 (2) A reprimand;

243 (3) The withholding of privileges for not more than six months, whether or not such  
244 withholding is for consecutive months;

245 (4) Restitution;

246 (5) The forfeiture of pay of not more than seven-day's pay;

247 (6) A reduction by one grade of a member in the grade of E-4 and below;

248 (7) Extra duties, including, but not limited to, fatigue duties, for not more than 14 days,  
249 whether or not such days are consecutive; and

250 (8) Restriction to certain specified limits, with or without suspension from duty, for not  
251 more than 14 days, whether or not such days are consecutive.

252 (c) As provided for by subsection (a) of this Code section, any commanding officer in the  
253 grade of O-4 or above may impose upon enlisted members of such commanding officer's  
254 command one or more of the following punishments:

255 (1) Any punishment authorized in paragraphs (1) through (4) of subsection (b) of this  
256 Code section;

257 (2) The forfeiture of not more than one-half of one month's pay per month for two  
258 months;

259 (3) A reduction by one grade of a member in the grade of E-6 and below;

260 (4) Extra duties, including, but not limited to, fatigue duties, for not more than 45 days,  
261 whether or not such days are consecutive; and



262 (5) Restriction to certain specified limits, with or without suspension from duty, for not  
 263 more than 60 days, whether or not such days are consecutive.

264 (d) As provided for by subsection (a) of this Code section, any commanding officer in the  
 265 grade of O-6 or above may impose upon enlisted members of such commanding officer's  
 266 command one or more of the following punishments:

267 (1) Any punishment authorized in paragraphs (1), (2), (4), and (5) of subsection (c) of  
 268 this Code section; and

269 (2) A reduction by one grade of a member in the grade of E-7 and below.

270 (e) As provided for by subsection (a) of this Code section, the adjutant general or an  
 271 officer of a general or flag rank in command may impose one or more of the following  
 272 punishments:

273 (1) Upon commissioned or warrant officers under the command of the adjutant general  
 274 or officers of a general or flag rank command:

275 (A) Any punishment authorized in paragraphs (1), (2), and (5) of subsection (c) of this  
 276 Code section; and

277 (B) Arrest in quarters for not more than 30 days, whether or not such days are  
 278 consecutive; and

279 (2) Upon enlisted members under the command of the adjutant general or officers of a  
 280 general or flag rank command:

281 (A) Any punishment authorized in paragraph (1) of subsection (d) of this Code section;  
 282 and

283 (B) A reduction by one grade.

284 (f) Whenever any of the punishments provided for by this Code section are combined to  
 285 run consecutively, the total length of the combined punishment shall not exceed the  
 286 authorized duration of the longest punishment in the combination, and there shall be an  
 287 apportionment of punishments such that no single punishment in the combination exceeds  
 288 its authorized length under this Code section.

289 (g)(1) The officer who imposes punishment under this Code section, or such officer's  
 290 successor in command, may, at any time, suspend, set aside, mitigate, or remit any part  
 291 or amount of the punishment and restore all rights, privileges, and property affected.  
 292 Such officer may also:

293 (A) Mitigate reduction in grade to forfeiture of pay;

294 (B) Mitigate arrest in quarters to restriction; or

295 (C) Mitigate extra duties to restriction.

296 (2) The mitigated punishment under this subsection shall not be for a greater period than  
 297 the punishment mitigated. When mitigating reduction in grade to forfeiture of pay, the  
 298 amount of the forfeiture shall not be greater than the amount that could have been

299 imposed initially under this Code section by the officer who imposed the punishment  
 300 mitigated.

301 (h) A person punished under this Code section who considers the punishment unjust or  
 302 disproportionate to the offense may through the proper channel appeal to the next superior  
 303 authority within 30 days after the punishment is either announced or sent to the accused,  
 304 as the commander may determine. The appeal shall be promptly forwarded and decided,  
 305 but the person punished may in the meantime be required to undergo the punishment  
 306 adjudged. The superior authority shall exercise the same powers with respect to the  
 307 punishment imposed as may be exercised under subsection (g) of this Code section by the  
 308 officer who imposed the punishment. Before acting on an appeal from a punishment, the  
 309 authority who is to act on the appeal may refer the case to a judge advocate for  
 310 consideration and advice.

311 (i) The imposition and enforcement of disciplinary punishment under this Code section for  
 312 any act or omission shall not be a bar to trial by court-martial or a civilian court of  
 313 competent jurisdiction for a serious crime or offense growing out of the same act or  
 314 omission and not properly punishable under this Code section; but the fact that a  
 315 disciplinary punishment has been enforced may be shown by the accused upon trial and,  
 316 when so shown, it shall be considered in determining the measure of punishment to be  
 317 adjudged in the event of a finding of guilty.

318 (j) Whenever a punishment of forfeiture of pay is imposed under this Code section, the  
 319 forfeiture may apply to pay accruing before, on, or after the date that punishment is  
 320 imposed.

321 (k) Regulations issued pursuant to Part 1 of Article 2 of this chapter may prescribe the  
 322 form of records to be kept of proceedings under this Code section and may prescribe that  
 323 certain categories of those proceedings shall be in writing.

324 (l) No member has the right to decline nonjudicial punishment under this Code section and  
 325 to demand any type of court-martial.

326 Part 4

327 38-2-1016.

328 There shall be three kinds of courts-martial in the organized militia:

329 (1) General courts-martial, which shall consist of:

330 (A) A military judge and not less than six members; or

331 (B) Only a military judge, if, before the court is assembled, the accused, knowing the  
 332 identity of the military judge and after consultation with defense counsel, requests

333 orally on the record or in writing a court composed of only a military judge and the  
 334 military judge approves;

335 (2) Special courts-martial, which shall consist of:

336 (A) A military judge and not less than six members; or

337 (B) Only a military judge, if one has been detailed to the court, and the accused under  
 338 the same conditions as those provided for in subparagraph (B) of paragraph (1) of this  
 339 Code section so requests; and

340 (3) Summary courts-martial, consisting of one commissioned officer.

341 38-2-1017.

342 Each force of the organized militia has court-martial jurisdiction over all members of the  
 343 particular force of the organized militia who are subject to this article. The Georgia Army  
 344 National Guard and the Georgia Air National Guard shall have court-martial jurisdiction  
 345 over all members subject to this article.

346 38-2-1018.

347 Subject to Code Section 38-2-1017, general courts-martial shall have jurisdiction to try  
 348 persons subject to this article for any offense made punishable by this article, and shall,  
 349 under such limitations as the Governor may prescribe pursuant to Part 1 of Article 2 of this  
 350 chapter, adjudge any one or more of the following punishments not otherwise forbidden  
 351 by this article:

352 (1) Confinement for a period of not more than ten years;

353 (2) Restriction to specified limits for not more than six months;

354 (3) Dismissal, dishonorable discharge, or bad conduct discharge;

355 (4) Forfeiture of all or a portion of pay and allowances;

356 (5) Restitution;

357 (6) Reduction to the lowest or any intermediate pay grade of enlisted persons;

358 (7) A reprimand; and

359 (8) No punishment.

360 38-2-1019.

361 Subject to Code Section 38-2-1017, special courts-martial shall have jurisdiction to try  
 362 persons subject to this article for any offense made punishable by this article, and shall,  
 363 under such limitations as the Governor, or the adjutant general by delegation of the  
 364 Governor, may prescribe by regulations issued pursuant to Part 1 of Article 2 of this  
 365 chapter, adjudge any one or more of the following punishments not otherwise forbidden  
 366 by this article:

- 367 (1) Confinement for a period of not more than one year;  
 368 (2) Restriction to specified limits for not more than six months;  
 369 (3) Bad conduct discharge;  
 370 (4) Forfeiture of all or a portion of pay and allowances for not more than one year;  
 371 (5) Restitution;  
 372 (6) Reduction to the lowest or any intermediate pay grade of enlisted persons;  
 373 (7) A reprimand; and  
 374 (8) No punishment.

375 38-2-1020.

376 (a) Subject to Code Section 38-2-1017, summary courts-martial shall have jurisdiction to  
 377 try persons subject to this article, except for commissioned or warrant officers, cadets,  
 378 candidates, and midshipmen, for any offense made punishable by this article under such  
 379 limitations as the Governor, or the adjutant general by delegation of the Governor, may  
 380 prescribe by regulations issued pursuant to Part 1 of Article 2 of this chapter.

381 (b) No person with respect to whom summary courts-martial shall have jurisdiction may  
 382 be brought to trial before a summary court-martial if he or she objects thereto. If objection  
 383 to trial by summary court-martial is made by an accused, trial by special or general  
 384 court-martial shall be ordered, as may be appropriate. Summary courts-martial shall, under  
 385 such limitations as the Governor, or the adjutant general by delegation of the Governor,  
 386 may prescribe by regulations issued pursuant to Part 1 of Article 2 of this chapter, adjudge  
 387 any one or more of the following punishments not otherwise forbidden by this article:

- 388 (1) Confinement for a period of not more than one month;  
 389 (2) Restriction to specified limits for not more than two months;  
 390 (3) Forfeiture of all or a portion of pay and allowances for not more than 60 days;  
 391 (4) Restitution;  
 392 (5) Reduction of no more than two grades of enlisted persons;  
 393 (6) A reprimand; and  
 394 (7) No punishment.

395 38-2-1021.

396 Reserved.

397

Part 5398 38-2-1022.

399 (a) General courts-martial may be convened by the Governor. The Governor may delegate  
 400 the authority to convene general courts-martial to the adjutant general, but such authority  
 401 shall not be delegated further.

402 (b) If the Governor is the accuser, the general court-martial shall be convened by the  
 403 Lieutenant Governor.

404 (c) For administrative purposes other than the actual convening of a general court-martial,  
 405 the adjutant general shall be considered the general court-martial convening authority.

406 38-2-1023.

407 (a) Special courts-martial may be convened by the Governor, the adjutant general, the  
 408 assistant adjutant general for army, or the assistant adjutant general for air.

409 (b) If any individual in subsection (a) of this Code section is an accuser, the special  
 410 court-martial shall be convened by superior competent authority and may in any case be  
 411 convened by such superior authority if considered desirable by such authority.

412 38-2-1024.

413 (a) Summary courts-martial may be convened by:

414 (1) Any person authorized to convene a special court-martial under subsection (a) of  
 415 Code Section 38-2-1023; or

416 (2) Any commander in the grade of O-6 or above.

417 (b) If any individual listed in subsection (a) of this Code section is an accuser, the  
 418 summary court-martial shall be convened by superior competent authority and may in any  
 419 case be convened by such superior authority if considered desirable by such authority.

420 (c) The Governor, or the adjutant general by delegation of the Governor, may, by written  
 421 order, further limit who may convene actions under this Code section.

422 38-2-1025.

423 (a) For purposes of this Code section, the term 'unit' means any regularly organized body  
 424 of the organized militia not larger than a company, a squadron, a division of the naval  
 425 militia, or a body corresponding to one of them.

426 (b) Any commissioned officer of the organized militia shall be eligible to serve on all  
 427 courts-martial for the trial of any person who is subject to this article.

428 (c) Any warrant officer of the organized militia shall be eligible to serve on general and  
429 special courts-martial for the trial of any person who is subject to this article, other than a  
430 commissioned officer.

431 (d) Any enlisted member of the organized militia who is not a member of the same unit  
432 as the accused shall be eligible to serve on general and special courts-martial for the trial  
433 of any enlisted member who is subject to this article, but such enlisted member shall serve  
434 as a member of a court only if, before the conclusion of a session called by the military  
435 judge under Code Section 38-2-1039 prior to trial or, in the absence of such a session,  
436 before the court is assembled for the trial of the accused, the accused personally has  
437 requested orally on the record or in writing that enlisted members serve on it. After such  
438 a request, the accused shall not be tried by a general or special court-martial the  
439 membership of which does not include enlisted members in a number comprising at least  
440 one-third of the total membership of the court, unless eligible enlisted members cannot be  
441 obtained on account of physical conditions or military exigencies. If such members cannot  
442 be obtained, the court shall be assembled and the trial held without such enlisted members,  
443 but the convening authority shall make a detailed written statement, to be appended to the  
444 record, stating why such number of enlisted members could not be obtained.

445 (e) No person who is subject to this article shall be tried by a court-martial any member  
446 of which is junior to the accused in rank or grade.

447 (f) When convening a court-martial, the convening authority shall detail as members  
448 thereof such members of the organized militia as, in the convening authority's opinion, are  
449 best qualified for the duty by reason of age, education, training, experience, length of  
450 service, and judicial temperament. No member of the organized militia shall be eligible  
451 to serve as a member of a general or special court-martial when that member is the accuser,  
452 a witness, or has acted as investigating officer or as counsel in the same case.

453 (g) Before a court-martial is assembled for the trial of a case, the convening authority may  
454 excuse a member of the court from participating in the case. The convening authority may  
455 delegate the authority under this subsection to a judge advocate or to any other principal  
456 assistant.

457 38-2-1026.

458 (a) A military judge shall be detailed to each general and special court-martial by the  
459 authority convening a general or special court-martial. The military judge shall preside  
460 over each open session of the court-martial to which the military judge has been detailed.

461 (b) A military judge shall be:

462 (1) An active or retired commissioned officer of the organized militia or state military  
 463 force of another state or of the armed forces of the United States or a reserve component  
 464 thereof;

465 (2) A member in good standing of the bar of the highest court of another state or a  
 466 member of the bar of a federal court for at least five years; and

467 (3) Certified as qualified for duty as a military judge by the judge advocate general of  
 468 the army, air force, or navy and the state judge advocate

469 (c) In the instance when a military judge is not a member of the bar of the highest court  
 470 of this state, the military judge shall be deemed admitted pro hac vice, subject to filing a  
 471 certificate with the state judge advocate setting forth such qualifications as provided for in  
 472 subsection (b) of this Code section.

473 (d) The military judge of a general or special court-martial shall be designated by the state  
 474 judge advocate, or a designee, for detail by the convening authority. Neither the convening  
 475 authority nor any primary staff member of the convening authority shall prepare or review  
 476 any report concerning the effectiveness, fitness, or efficiency of the military judge so  
 477 detailed, which relates to performance of duty as a military judge.

478 (e) Whenever possible, the military judge of a general or special court-martial shall be of  
 479 the same branch of service as the accused.

480 (f) No person shall be eligible to act as military judge in a case if that person is the accuser  
 481 or a witness or has acted as investigating officer or a counsel in the same case.

482 (g) The military judge of a court-martial shall not consult with the members of the court  
 483 except in the presence of the accused, trial counsel, and defense counsel and shall not vote  
 484 with the members of the court.

485 (h) If no person who meets the qualifications to serve as military judge under this Code  
 486 section is readily available in the sole discretion of the state judge advocate, a law officer  
 487 shall be appointed. A law officer may serve in place of a military judge provided he or she  
 488 meets the qualifications as provided for in paragraphs (1) and (2) of subsection (b) of this  
 489 Code section and is approved for such service, in writing, by the state judge advocate.

490 38-2-1027.

491 (a)(1) For each general and special court-martial the convening authority shall detail a  
 492 trial counsel and such assistants as appropriate.

493 (2) For each general and special court-martial, if the United States Army Trial Defense  
 494 Services or a similar entity exists, such entity shall detail defense counsel and such  
 495 assistants as are appropriate. If no appropriate such entity exists, the convening authority  
 496 shall detail defense counsel and such assistants as are appropriate.

497 (3) No person who has acted as investigating officer, military judge, a witness, or court  
498 member in any case may act later as trial counsel, assistant trial counsel, or, unless  
499 expressly requested by the accused, as defense counsel or assistant or associate defense  
500 counsel in the same case. No person who has acted for the prosecution may act later in  
501 the same case for the defense nor may any person who has acted for the defense act later  
502 in the same case for the prosecution.

503 (b) Except as provided in subsection (c) of this Code section, trial counsel or defense  
504 counsel detailed for a general or special court-martial shall be a judge advocate.

505 (c) In the instance where a defense counsel is not a member of the bar of the highest court  
506 of this state, the defense counsel shall be deemed admitted pro hac vice, subject to filing  
507 a certificate with the military judge setting forth the qualifications that counsel is:

508 (1) A commissioned officer of the organized militia or state military force of another  
509 state or of the armed forces of the United States or a reserve component thereof;

510 (2) A member in good standing of the bar of the highest court of another state; and

511 (3) Certified as a judge advocate in the judge advocate general's corps of the army, air  
512 force, navy, or the marine corps.

513 (d) Nothing in this Code section shall preclude the accused from hiring a civilian attorney  
514 who is a member of the bar of this state or who has been admitted pro hac vice. Such  
515 attorney shall serve the accused at no cost to another state or the federal government.

516 38-2-1028.

517 Under such regulations as may be prescribed by the Governor pursuant to Part 1 of Article  
518 2 of this chapter, the convening authority of a general or special court-martial or court of  
519 inquiry shall detail or employ qualified court reporters who shall record the proceedings  
520 of and testimony taken before that court. Under like regulations, the convening authority  
521 may detail or employ interpreters who shall interpret for the court.

522 38-2-1029.

523 (a) No member of a general or special court-martial shall be absent or excused after the  
524 court has been assembled for the trial of the accused unless excused as a result of a  
525 challenge, excused by the military judge for physical disability or other good cause, or  
526 excused by order of the convening authority for good cause.

527 (b) Whenever a general court-martial, other than a general court-martial composed of a  
528 military judge only, is reduced below six members, the trial shall not proceed unless the  
529 convening authority details new members sufficient in number to provide not less than six  
530 members. The trial shall proceed with the new members present after the recorded



531 evidence previously introduced before the members of the court has been read to the court  
532 in the presence of the military judge, the accused, and counsel for both sides.

533 (c) Whenever a special court-martial, other than a special court-martial composed of a  
534 military judge only, is reduced below six members, the trial shall not proceed unless the  
535 convening authority details new members sufficient in number to provide not less than six  
536 members. The trial shall proceed with the new members present as if no evidence had been  
537 introduced previously at the trial, unless a verbatim record of the evidence previously  
538 introduced before the members of the court or a stipulation thereof is read to the court in  
539 the presence of the military judge, the accused, and counsel for both sides.

540 (d) If the military judge of a court-martial composed of a military judge only is unable to  
541 proceed with the trial because of physical disability, as a result of a challenge, or for other  
542 good cause, the trial shall proceed, subject to any applicable conditions of subparagraph  
543 (B) of paragraphs (1) and (2) of Code Section 38-2-1016, after the detail of a new military  
544 judge as if no evidence had previously been introduced, unless a verbatim record of the  
545 evidence previously introduced or a stipulation thereof is read in court in the presence of  
546 the new military judge, the accused, and counsel for both sides.

547 Part 6

548 38-2-1030.

549 (a) Charges and specifications shall be signed by a person subject to this article under oath  
550 before a commissioned officer authorized by Code Section 38-2-1136 to administer oaths  
551 and shall state:

552 (1) That the signer has personal knowledge of, or has investigated, the matters set forth  
553 therein; and

554 (2) That the same are true in fact to the best of the signer's knowledge and belief.

555 (b) Upon the preferring of charges, the convening authority shall take immediate steps to  
556 determine what disposition should be made thereof in the interest of justice and discipline,  
557 and the person accused shall be informed of the charges as soon as practicable.

558 (c) The preferring of charges and findings and sentence of a general court-martial or  
559 special court-martial, or other disposition of the charges of the general court-martial or  
560 special court-martial, shall be reported to the Georgia Crime Information Center. The  
561 Governor shall prescribe by regulations issued pursuant to Part 1 of Article 2 of this chapter  
562 the means, manner, and methods of such reporting to the Georgia Crime Information  
563 Center.

564 38-2-1031.

565 (a) No person subject to this article shall compel any person to incriminate himself or  
566 herself or to answer any question the answer to which may tend to incriminate him or her.

567 (b) No person subject to this article shall interrogate or request any statement from an  
568 accused or a person suspected of an offense without first informing him or her of the nature  
569 of the accusation and advising him or her that he or she does not have to make any  
570 statement regarding the offense of which he or she is accused or suspected and that any  
571 statement made by him or her may be used as evidence against him or her in a trial by  
572 court-martial.

573 (c) No person subject to this article shall compel any person to make a statement or  
574 produce evidence before any military court if the statement or evidence is not material to  
575 the issue and may tend to degrade him or her.

576 (d) No statement obtained from any person in violation of this article or through the use  
577 of coercion, unlawful influence, or unlawful inducement shall be received in evidence  
578 against him or her in a trial by court-martial.

579 38-2-1032.

580 (a) No charge or specification shall be referred to a general court-martial for trial until a  
581 thorough and impartial investigation of all the matters set forth therein has been made  
582 unless such investigation has been waived in writing by the accused after consultation with  
583 his or her defense counsel. Such investigation shall include inquiry as to the truth of the  
584 matter set forth in the charges, consideration of the form of charges, and a recommendation  
585 as to the disposition which should be made of the case in the interest of justice and  
586 discipline.

587 (b) The accused shall be advised of the charges against him or her and of the right to be  
588 represented at the investigation provided for by subsection (a) of this Code section by  
589 counsel. The accused has the right to be represented at such investigation as provided in  
590 Code Section 38-2-1038 and in regulations prescribed under that Code section. At such  
591 investigation, full opportunity shall be given to the accused to cross-examine witnesses  
592 against him or her, if they are available, and to present anything relevant he or she may  
593 desire in his or her own behalf, either in defense or mitigation, and the investigating officer  
594 shall examine available relevant witnesses requested by the accused. If the charges are  
595 forwarded after the investigation, they shall be accompanied by a statement of the  
596 substance of the testimony taken on both sides and a copy thereof shall be given to the  
597 accused.

598 (c) If an investigation of the subject matter of an offense has been conducted before the  
599 accused is charged with the offense, and if the accused was present at the investigation and

600 afforded the opportunities for representation, cross-examination, and presentation  
 601 prescribed in subsection (b) of this Code section, no further investigation of that charge  
 602 shall be necessary under this Code section unless it is demanded by the accused after he or  
 603 she is informed of the charge. A demand for further investigation shall entitle the accused  
 604 to recall witnesses for further cross-examination and to offer any new relevant evidence in  
 605 the accused's own behalf.

606 (d) If evidence adduced in an investigation under this Code section indicates that the  
 607 accused committed an uncharged offense, the investigating officer may investigate the  
 608 subject matter of that offense without the accused having first been charged with the  
 609 offense if the accused is:

610 (1) Present at the investigation;

611 (2) Informed of the nature of each uncharged offense investigated; and

612 (3) Afforded the opportunities for representation, cross-examination, and presentation  
 613 prescribed in subsection (b) of this Code section.

614 (e) The requirements of this Code section shall be binding on all persons administering this  
 615 article, but failure to follow them shall not constitute jurisdictional error.

616 38-2-1033.

617 When a person is held for trial by general court-martial, the commanding officer shall,  
 618 within three days after the accused is ordered into arrest or confinement, forward the  
 619 charges, together with the investigation and allied papers, to the person exercising general  
 620 court-martial jurisdiction.

621 38-2-1034.

622 (a) Before directing the trial of any charge by general or special court-martial, the  
 623 convening authority shall refer it to the staff judge advocate of the service of the accused  
 624 for consideration and advice. The convening authority shall not refer a specification under  
 625 a charge to a general or special court-martial for trial unless the convening authority has  
 626 been advised in writing by the staff judge advocate of the service of the accused that:

627 (1) The specification alleges an offense under this article;

628 (2) The specification is warranted by the evidence indicated in the report of investigation  
 629 as provided for under Code Section 38-2-1032, if there is such a report; and

630 (3) A court-martial would have jurisdiction over the accused and the offense.

631 (b) The advice of the staff judge advocate under subsection (a) of this Code section with  
 632 respect to a specification under a charge shall include a written and signed statement by the  
 633 staff judge advocate:

634 (1) Expressing conclusions with respect to each matter set forth in subsection (a) of this  
635 Code section; and

636 (2) Recommending action that the convening authority take regarding the specification.  
637 If the specification is referred for trial, the recommendation of the staff judge advocate  
638 shall accompany the specification.

639 (c) If the charges or specifications are not formally correct or do not conform to the  
640 substance of the evidence contained in the report of the investigating officer, formal  
641 corrections, and such changes in the charges and specifications as are needed to make them  
642 conform to the evidence, may be made.

643 38-2-1035.

644 The trial counsel shall serve or cause to be served upon the accused a copy of the charges.  
645 No person shall, against his or her objection, be brought to trial before a general  
646 court-martial case within a period of five days after the service of charges upon him or her,  
647 or before a special court-martial case within a period of three days after the service of  
648 charges upon him or her.

649 Part 7

650 38-2-1036.

651 Pretrial, trial, and post-trial procedures, including, but not limited to, modes of proof, for  
652 courts-martial cases arising under this article and for courts of inquiry shall be prescribed  
653 by the Governor, or the adjutant general by delegation of the Governor, by regulations  
654 issued pursuant to Part 1 of Article 2 of this chapter, or as otherwise provided by law,  
655 which shall apply the principles of law generally recognized in military criminal cases in  
656 the courts of the armed forces but which may not be contrary to or inconsistent with this  
657 article.

658 38-2-1037.

659 (a) No authority convening a general, special, or summary court-martial nor any other  
660 commanding officer or officer serving on the staff thereof may censure, reprimand, or  
661 admonish such court or any member, the military judge, counsel, or witness thereof with  
662 respect to the findings or sentence adjudged by the court or with respect to any other  
663 exercise of its or his or her functions in the conduct of the proceedings. No person subject  
664 to this article shall attempt to coerce or, by any unauthorized means, influence the action  
665 of a court-martial or court of inquiry or any member thereof in reaching the findings or

666 sentence in any case or the action of any convening, approving, or reviewing authority with  
 667 respect to their judicial acts.

668 (b) Subsection (a) of this Code section shall not apply with respect to:

669 (1) General instructional or informational courses in military justice if such courses are  
 670 designed solely for the purpose of instructing members of a command in the substantive  
 671 and procedural aspects of courts-martial; or

672 (2) Statements and instructions given in open court by the military judge, summary  
 673 court-martial officer, or counsel.

674 (c) In the preparation of an effectiveness, fitness, or efficiency report, or any other report  
 675 or document used in whole or in part for the purpose of determining whether a member of  
 676 the organized militia is qualified to be advanced in grade, of determining the assignment  
 677 or transfer of a member of the organized militia, or of determining whether a member of  
 678 the organized militia should be retained on active status, no person subject to this article  
 679 shall, in preparing any such report:

680 (1) Consider or evaluate the performance of duty of any such member as a member of  
 681 a court-martial or witness therein; or

682 (2) Give a less favorable rating or evaluation of any counsel of the accused because of  
 683 zealous representation before a court-martial.

684 38-2-1038.

685 (a) The trial counsel of a general or special court-martial shall be a member in good  
 686 standing of the State Bar of Georgia and shall prosecute in the name of this state and shall,  
 687 under the direction of the court, prepare the record of the proceedings.

688 (b)(1) The accused shall have the right to be represented in defense before a general or  
 689 special court-martial or at an investigation under Code Section 38-2-1032 as provided for  
 690 in this subsection.

691 (2) The accused may be represented by civilian counsel at the provision and expense of  
 692 the accused.

693 (3) Except as otherwise provided in this Code section, the accused shall be represented  
 694 by:

695 (A) Military counsel as provided for under Code Section 38-2-1027; or

696 (B) Military counsel of the accused's own selection if such counsel is reasonably  
 697 available as determined under paragraph (7) of this subsection.

698 (4) If the accused is represented by civilian counsel, military counsel detailed or selected  
 699 under paragraph (3) of this subsection shall act as associate counsel if requested in  
 700 writing by the accused; provided, however, that if no such request in writing is made,  
 701 military counsel detailed under paragraph (3) of this subsection shall be excused.

702 (5) Except as provided under paragraph (6) of this subsection, if the accused is  
 703 represented by military counsel of his or her own selection under subparagraph (b)(3)(B)  
 704 of this Code section, any military counsel detailed under subparagraph (b)(3)(A) of this  
 705 Code section shall be excused.

706 (6) The accused shall not be entitled to be represented by more than one military counsel;  
 707 provided, however, that the person authorized under regulations prescribed under Code  
 708 Section 38-2-1027 to detail counsel, in such person's sole discretion:

709 (A) May detail additional military counsel as assistant defense counsel; and

710 (B) If the accused is represented by military counsel of the accused's own selection  
 711 under subparagraph (b)(3)(B) of this Code section, may approve a request from the  
 712 accused that military counsel detailed under subparagraph (b)(3)(A) of this Code  
 713 section act as associate defense counsel.

714 (7) The staff judge advocate of the same force of the accused shall determine whether  
 715 the military counsel selected by an accused is reasonably available.

716 (c) In any court-martial proceeding resulting in a conviction, the defense counsel may:

717 (1) Forward for attachment to the record of proceedings a brief of such matters as  
 718 counsel determines should be considered in behalf of the accused on review, including  
 719 any objection to the contents of the record which such counsel considers appropriate;

720 (2) Assist the accused in the submission of any matter under Code Section 38-2-1060;  
 721 and

722 (3) Take other action as authorized by this article.

723 38-2-1039.

724 (a) At any time after the service of charges which have been referred for trial to a  
 725 court-martial composed of a military judge and members, the military judge shall, subject  
 726 to Code Section 38-2-1035, call the court into session without the presence of the members  
 727 for the purpose of:

728 (1) Hearing and determining motions raising defenses or objections which are capable  
 729 of determination without trial of the issues raised by a plea of not guilty;

730 (2) Hearing and ruling upon any matter which may be ruled upon by the military judge  
 731 under this article, whether or not the matter is appropriate for later consideration or  
 732 decision by the members of the court;

733 (3) Holding the arraignment and receiving the pleas of the accused; and

734 (4) Performing any other procedural function which does not require the presence of the  
 735 members of the court under this article.

736 (b) The proceedings as provided for by subsection (a) of this Code section shall be  
 737 conducted in the presence of the accused, the defense counsel, and the trial counsel and

738 shall be made a part of the record. Such proceedings shall be conducted notwithstanding  
739 the number of court members and without regard to Code Section 38-2-1029.

740 (c) When the members of a court-martial deliberate or vote, only the members shall be  
741 present. All other proceedings, including, but not limited to, any other consultation of the  
742 members of the court with counsel or the military judge, shall be made a part of the record  
743 and shall be in the presence of the accused, the defense counsel, the trial counsel, and the  
744 military judge.

745 38-2-1040.

746 The military judge of a court-martial or a summary court-martial officer may, for  
747 reasonable cause, grant a continuance to any party for such time and as often as may appear  
748 to be just.

749 38-2-1041.

750 (a)(1) The military judge and members of a general or special court-martial may be  
751 challenged by the accused or the trial counsel for cause stated to the court. The military  
752 judge, if one, or the court shall determine the relevancy and validity of challenges for  
753 cause and shall not receive a challenge to more than one person at a time. Challenges by  
754 the trial counsel shall ordinarily be presented and decided before those by the accused are  
755 offered.

756 (2) If exercise of a challenge for cause reduces the court below the minimum number of  
757 members required by Code Section 38-2-1016, all parties shall, notwithstanding Code  
758 Section 38-2-1029, either exercise or waive any challenge for cause then apparent against  
759 the remaining members of the court before additional members are detailed to the court;  
760 provided, however, that peremptory challenges shall not be exercised at such time.

761 (b)(1) Each accused and the trial counsel are entitled initially to one peremptory  
762 challenge of members of the court. The military judge shall not be challenged except for  
763 cause.

764 (2) If exercise of a peremptory challenge reduces the court below the minimum number  
765 of members required by Code Section 38-2-1016, the parties shall, notwithstanding Code  
766 Section 38-2-1029, either exercise or waive any remaining peremptory challenge, not  
767 previously waived, against the remaining members of the court before additional  
768 members are detailed to the court.

769 (3) Whenever additional members are detailed to the court, and after any challenges for  
770 cause against such additional members are presented and decided, each accused and the  
771 trial counsel are entitled to one peremptory challenge against members not previously  
772 subject to peremptory challenge.

773 38-2-1042.

774 (a) Before performing their respective duties, military judges, general and special  
775 courts-martial members, trial counsel, defense counsel, reporters, and interpreters shall take  
776 an oath or affirmation to perform their duties faithfully. The form of such oath or  
777 affirmation, the time and place of the taking thereof, the manner of recording the same, and  
778 whether the oath or affirmation shall be taken for all cases in which such duties are to be  
779 performed or for a particular case, shall be as prescribed in regulations issued pursuant to  
780 Part 1 of Article 2 of this chapter or as provided by law. Such regulations shall provide that  
781 an oath or affirmation to perform faithfully the duties as a military judge, trial counsel, or  
782 defense counsel may be taken at any time by any judge advocate or other person certified  
783 or designated to be qualified or competent for the duty, and if such an oath or affirmation  
784 is taken, it need not again be taken at the time the judge advocate or other person is detailed  
785 to that duty.

786 (b) Each witness before a court-martial shall be examined under oath or affirmation.

787 38-2-1043.

788 (a) A person charged with desertion or absence without leave in time of armed conflict or  
789 war, whether or not declared, or with aiding the enemy or with mutiny shall be tried and  
790 punished at any time without limitation.

791 (b) Except as otherwise provided in this article, a person charged with any offense shall  
792 not be liable to be tried by court-martial or punished under Code Section 38-2-1015 if the  
793 offense was committed more than three years before the receipt of sworn charges and  
794 specifications by an officer exercising court-martial jurisdiction over the command or  
795 before the imposition of punishment under Code Section 38-2-1015.

796 (c) Periods in which the accused is absent without authority or fleeing from justice shall  
797 be excluded in computing the period of limitation prescribed in this Code section.

798 (d) Periods in which the accused was absent from territory in which this state has the  
799 authority to take the accused into custody, or in which such accused is in the custody of  
800 civil authorities or in the hands of the enemy, shall be excluded in computing the period  
801 of limitation prescribed in this Code section.

802 (e)(1) If charges or specifications are dismissed as defective or insufficient for any cause  
803 and the period of limitation prescribed by this Code section has expired or will expire  
804 within 180 days after the date of dismissal of the charges and specifications, trial and  
805 punishment under new charges and specifications shall not be barred by the period of  
806 limitation prescribed by this Code section if the conditions specified in paragraph (2) of  
807 this subsection are met.



808 (2) The conditions provided for by paragraph (1) of this subsection shall be that the new  
809 charges and specifications shall:

810 (A) Be received by an officer exercising summary court-martial jurisdiction over the  
811 command within 180 days after the dismissal of the charges or specifications; and

812 (B) Allege the same acts or omissions that were alleged in the dismissed charges or  
813 specifications or allege acts or omissions that were included in the dismissed charges  
814 or specifications.

815 38-2-1044.

816 (a) No person shall, without his or her consent, be tried a second time for the same offense.

817 (b) No proceeding in which an accused has been found guilty by a court-martial upon any  
818 charge or specification shall be a trial in the sense of this Code section until the finding of  
819 guilty has become final after review of the case has been fully completed.

820 (c) A proceeding which, after the introduction of evidence but before a finding, is  
821 dismissed or terminated by the convening authority or on motion of the prosecution for  
822 failure of available evidence or witnesses without any fault of the accused shall be a trial  
823 in the sense of this Code section.

824 38-2-1045.

825 (a) If an accused after arraignment makes an irregular pleading, or after a plea of guilty  
826 sets up matter inconsistent with the plea, or if it appears that the accused has entered the  
827 plea of guilty improvidently or through lack of understanding of its meaning and effect or  
828 if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record,  
829 and the court shall proceed as though the accused had pleaded not guilty.

830 (b) With respect to any charge or specification to which a plea of guilty has been made by  
831 the accused and accepted by the military judge or by a court-martial without a military  
832 judge, a finding of guilty of the charge or specification may be entered immediately  
833 without vote. Such finding shall constitute the finding of the court unless the plea of guilty  
834 is withdrawn prior to announcement of the sentence, in which event, the proceedings shall  
835 continue as though the accused had pleaded not guilty.

836 38-2-1046.

837 The trial counsel, the defense counsel, and the summary court-martial officer shall have  
838 equal opportunity to obtain witnesses and other evidence as prescribed by regulations  
839 issued pursuant to Part 1 of Article 2 of this chapter.

840 38-2-1046.1.

841 (a) Military courts are empowered to issue all process and mandates necessary and proper  
 842 to carry into full effect the powers vested in the courts. The courts shall have power to issue  
 843 subpoenas for the attendance of witnesses and subpoenas for the production of  
 844 documentary evidence and to enforce by attachment attendance of witnesses and  
 845 production of books, records, and other documentary evidence.

846 (b) Such process and mandates may be issued by military judges, summary courts-martial,  
 847 provost courts, the president of other military courts, and boards of officers; may be  
 848 directed to and may be executed by any sheriff, the marshals of the military court, or any  
 849 peace officer; and shall be in such form as may be prescribed by regulations issued  
 850 pursuant to Part 1 of Article 2 of this chapter.

851 (c) It shall be the duty of all officers to whom process or mandate may be so directed to  
 852 execute the same and make return of their acts thereunder according to the requirements  
 853 of the same. Except as otherwise specifically provided in this article, no such officer shall  
 854 demand or require payment of any fee or charge of any nature for receiving, executing, or  
 855 returning any process or mandate or for any services in connection therewith.

856 38-2-1047.

857 (a) Any person not subject to this article who:

858 (1) Has been duly subpoenaed to appear as a witness or to produce books and records  
 859 before a court-martial or court of inquiry or before any military or civil officer designated  
 860 to take a deposition to be read in evidence before such court;

861 (2) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed  
 862 to witnesses attending a criminal court of this state; and

863 (3) Willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify  
 864 or to produce any evidence which that person may have been legally subpoenaed to  
 865 produce

866 shall be punished by the military court in the same manner as a criminal court of this state.

867 (b) The fees and mileage of witnesses shall be advanced or paid out of the appropriations  
 868 for the compensation of witnesses or other appropriate funds.

869 38-2-1048.

870 (a) A military judge may punish for contempt any person who uses any menacing word,  
 871 sign, or gesture in his or her presence, or who disturbs the proceedings of the military court  
 872 by any riot or disorder.

873 (b) A person subject to this article may be punished for contempt by confinement not to  
 874 exceed 30 days or a fine of \$1,000.00, or both.

875 (c) A person not subject to this article may be punished for contempt by a military court  
876 in the same manner as a criminal court of this state.

877 38-2-1049.

878 (a) At any time after charges have been signed as provided for in Code Section 38-2-1030,  
879 the military judge or summary court-martial officer, with approval of the state judge  
880 advocate, may allow a party to take oral or written depositions for good cause.

881 (b) The party at whose instance a deposition is to be taken shall give to every other party  
882 reasonable written notice of the time and place for taking the deposition, and such party  
883 may attend and participate in the deposition.

884 (c) Depositions shall be taken before and authenticated by any military or civil officer  
885 authorized by the laws of this state or by the laws of the place where the deposition is taken  
886 to administer oaths.

887 (d) A duly authenticated deposition taken upon reasonable notice to the other parties, so  
888 far as otherwise admissible under the rules of evidence, may be read in evidence or, in the  
889 case of audiotape, videotape, digital image or file, or similar material, may be played in  
890 evidence before any military court, if it appears that:

891 (1) The witness resides or is beyond another state in which the court is ordered to sit, or  
892 beyond 100 miles from the place of trial or hearing;

893 (2) The witness, by reason of death, age, sickness, bodily infirmity, imprisonment,  
894 military necessity, nonamenability to process, or other reasonable cause, is unable or  
895 refuses to appear and testify in person at the place of trial or hearing; or

896 (3) The present whereabouts of the witness are unknown.

897 38-2-1050.

898 (a) In any case not extending to the dismissal of a commissioned officer, the sworn  
899 testimony, contained in the duly authenticated record of proceedings of a court of inquiry,  
900 of a person whose oral testimony cannot be obtained may, if otherwise admissible under  
901 the rules of evidence, be read in evidence by any party before a court-martial if the accused  
902 was a party before the court of inquiry and if the same issue was involved or if the accused  
903 consents to the introduction of such evidence.

904 (b) In any case extending to the dismissal of a commissioned officer, the sworn testimony,  
905 contained in the duly authenticated record of proceedings of a court of inquiry, of a person  
906 whose oral testimony cannot be obtained may, if otherwise admissible under the rules of  
907 evidence, be read in evidence only by the defense.

908 (c) Such testimony as provided for in subsections (a) and (b) of this Code section may be  
909 read in evidence before a court of inquiry in like manner as provided for in subsections (a)  
910 and (b) of this Code section.

911 38-2-1050.1.

912 (a) It shall be an affirmative defense in a trial by court-martial that, at the time of the  
913 commission of the acts constituting the offense, the accused, as a result of a severe mental  
914 disease or defect, was unable to appreciate the nature and quality or the wrongfulness of  
915 his or her acts. Mental disease or defect shall not otherwise constitute a defense.

916 (b) The accused has the burden of proving the defense as provided for by subsection (a)  
917 of this Code section by clear and convincing evidence.

918 (c) Whenever lack of mental responsibility of the accused with respect to an offense is  
919 properly at issue, the military judge shall follow the procedures set forth in Code Section  
920 17-7-131.

921 38-2-1051.

922 (a) Voting by members of a general or special court-martial on the findings and on the  
923 sentence shall be by secret written ballot. The junior member of the court shall count the  
924 votes. The count shall be checked by the president who shall forthwith announce the result  
925 of the ballot to the members of the court.

926 (b) The military judge shall rule upon all questions of law and all interlocutory questions  
927 arising during the proceedings. Any such ruling made by the military judge upon any  
928 question of law or any interlocutory question other than the factual issue of mental  
929 responsibility of the accused shall be final and shall constitute the ruling of the court;  
930 provided, however, that the military judge may change the ruling at any time during the  
931 trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared  
932 and closed and the question decided by a voice vote as provided in Code Section  
933 38-2-1052, beginning with the member junior in rank.

934 (c) Before a vote is taken on the findings, the military judge shall, in the presence of the  
935 accused and counsel, instruct the members of the court as to the elements of the offense and  
936 charge them that:

937 (1) The accused must be presumed to be innocent until his or her guilt is established by  
938 legal and competent evidence beyond reasonable doubt;

939 (2) In the case being considered, if there is a reasonable doubt as to the guilt of the  
940 accused, the doubt must be resolved in favor of the accused and the accused must be  
941 acquitted;

942 (3) If there is a reasonable doubt as to the degree of guilt, the finding must be in a lower  
943 degree as to which there is no reasonable doubt; and

944 (4) The burden of proof to establish the guilt of the accused beyond a reasonable doubt  
945 is upon the state.

946 (d) Subsections (a), (b), and (c) of this Code section shall not apply to a court-martial  
947 composed of a military judge only. The military judge of such a court-martial shall  
948 determine all questions of law and fact arising during the proceedings and, if the accused  
949 is convicted, adjudge an appropriate sentence. The military judge of such a court-martial  
950 shall make a general finding and shall in addition, on request, find the facts specially. If  
951 an opinion or memorandum of decision is filed, it shall be sufficient if the findings of fact  
952 appear therein.

953 38-2-1052.

954 (a) No person shall be convicted of an offense, except:

955 (1) As provided in Code Section 38-2-1045;

956 (2) By the vote of two-thirds of the members;

957 (3) By a summary court-martial officer; or

958 (4) If a court-martial is composed of a military judge only, by decision of the military  
959 judge.

960 (b) If two-thirds of the members of a court-martial composed of members do not vote for  
961 a conviction, the accused shall be acquitted.

962 (c)(1) All questions other than the questions provided for under subsections (a) and (b)  
963 of this Code section to be decided by the members of a general or special court-martial  
964 shall be determined by a majority vote; provided, however, that a determination to  
965 reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing  
966 it, shall be made by any lesser vote which indicates that the reconsideration is not  
967 opposed by the number of votes required for that finding or sentence.

968 (2) A tie vote on a challenge shall disqualify the member challenged.

969 (3) A tie vote on a motion relating to the question of the sanity of the accused shall be  
970 a determination against the accused.

971 (4) A tie vote on a question other than the questions provided for under paragraphs (2)  
972 and (3) of this subsection shall be a determination in favor of the accused.

973 38-2-1053.

974 A court-martial shall announce its findings and sentence to the parties as soon as  
975 determined.

976 38-2-1054.

977 (a) Each general and special court-martial shall keep a separate record of the proceedings  
 978 in each case brought before it, and the record shall be authenticated by the signature of the  
 979 military judge. If the record cannot be authenticated by the military judge by reason of his  
 980 or her death, disability, or absence, it shall be authenticated by the signature of the trial  
 981 counsel or by that of a member, if the trial counsel is unable to authenticate it by reason of  
 982 his or her death, disability, or absence. In a court-martial consisting of only a military  
 983 judge, the record shall be authenticated by the court reporter under the same conditions  
 984 which would impose such a duty on a member under this subsection.

985 (b)(1) A complete verbatim record of the proceedings and testimony shall be prepared  
 986 in each general and special court-martial case resulting in a conviction.

987 (2) In all court-martial cases other than as provided for by paragraph (1) of this  
 988 subsection, the record shall contain such matters as may be prescribed by regulations  
 989 issued pursuant to Part 1 of Article 2 of this chapter.

990 (c) Each summary court-martial shall keep a separate record of the proceedings in each  
 991 case, and the record shall be authenticated in the manner as may be prescribed by  
 992 regulations issued pursuant to Part 1 of Article 2 of this chapter.

993 (d) A copy of the record of the proceedings of each general and special court-martial shall  
 994 be given to the accused as soon as it is authenticated.

995 Part 8

996 38-2-1055.

997 Punishment by flogging or by branding, marking, or tattooing on the body or any other  
 998 cruel or unusual punishment shall not be adjudged by a court-martial or inflicted upon any  
 999 person subject to this article. The use of irons, single or double, except for the purpose of  
 1000 safe custody, is prohibited.

1001 38-2-1056.

1002 (a) The punishment which a court-martial may direct for an offense shall not exceed such  
 1003 limits as prescribed by this article, but in no instance shall a sentence exceed more than ten  
 1004 years nor shall a sentence of death be adjudged. A conviction by general court-martial of  
 1005 any offense for which an accused may receive a sentence of confinement for more than one  
 1006 year shall be a felony offense. Except for convictions by a summary court-martial, all other  
 1007 convictions shall be misdemeanors. Any conviction by a summary court-martial shall not  
 1008 be a criminal conviction.

1009 (b) The limits of punishment for violations of this article prescribed herein shall be the  
1010 lesser of the sentences prescribed by the manual for courts-martial of the United States in  
1011 effect on January 1, 2015, if such manual contains the offense, and any regulations or  
1012 manual for courts-martial adopted in this state pursuant to Code Section 38-2-1036, but in  
1013 no instance shall any punishment exceed that authorized by this article.

1014 38-2-1057.

1015 (a) Whenever a sentence of a court-martial as lawfully adjudged and approved includes  
1016 a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture  
1017 shall apply to pay or allowances becoming due on or after the date the sentence is approved  
1018 by the convening authority. No forfeiture shall extend to any pay or allowances accrued  
1019 before that date.

1020 (b) Any period of confinement included in a sentence of a court-martial shall begin to run  
1021 from the date the sentence is adjudged by the court-martial, but periods during which the  
1022 sentence to confinement is suspended or deferred shall be excluded in computing the  
1023 service of the term of confinement.

1024 (c) All sentences of courts-martial, except as provided for by subsections (a) and (b) of this  
1025 Code section, shall be effective on the date ordered executed.

1026 38-2-1057.1.

1027 (a) On application by an accused who is under sentence to confinement that has not been  
1028 ordered executed, the convening authority or, if the accused is no longer under that person's  
1029 jurisdiction, the person exercising general court-martial jurisdiction over the command to  
1030 which the accused is currently assigned may, in that person's sole discretion, defer service  
1031 of the sentence to confinement. Such deferment shall terminate when the sentence is  
1032 ordered executed. Such deferment may be rescinded at any time by the person who granted  
1033 it or, if the accused is no longer under that person's jurisdiction, by the person exercising  
1034 general court-martial jurisdiction over the command to which the accused is currently  
1035 assigned.

1036 (b)(1) In any case in which a court-martial sentences an accused as provided for in  
1037 paragraph (2) of this subsection to confinement, the convening authority shall defer the  
1038 service of the sentence to confinement, without the consent of the accused, until after the  
1039 accused has been permanently released to the organized militia by another state, the  
1040 United States, or a foreign country referred to in that paragraph.

1041 (2) Paragraph (1) of this subsection shall apply to a person subject to this article who:

1042 (A) While in the custody of another state, the United States, or a foreign country is  
1043 temporarily returned by such state, the United States, or a foreign country to the  
1044 organized militia for trial by court-martial; and

1045 (B) After the court-martial, is returned to such state, the United States, or a foreign  
1046 country under the authority of a mutual agreement or treaty, as the case may be.

1047 (c) In any case in which a court-martial sentences an accused to confinement and the  
1048 sentence to confinement has been ordered executed, but in which review of the case under  
1049 Code Section 38-2-1067 is pending, the adjutant general may defer further service of the  
1050 sentence to confinement while that review is pending.

1051 38-2-1058.

1052 (a) A sentence of confinement adjudged by a court-martial, whether or not the sentence  
1053 includes discharge or dismissal, and whether or not the discharge or dismissal has been  
1054 executed, shall be carried into execution by confinement in any place authorized by this  
1055 article. Persons so confined shall be subject to the same discipline and treatment as persons  
1056 regularly confined or committed to that place of confinement.

1057 (b) The omission of hard labor as a sentence authorized under this article shall not deprive  
1058 a confinement facility from employing it, if it otherwise is within the authority of that  
1059 facility to do so.

1060 (c) No place of confinement shall require payment of any fee or charge for so receiving  
1061 or confining a person except as otherwise provided by law.

1062 38-2-1058.1.

1063 (a) A court-martial sentence of an enlisted member in a pay grade above E-1, as approved  
1064 by the convening authority, that includes a dishonorable or bad conduct discharge or  
1065 confinement shall reduce that member to pay grade E-1, effective on the date of that  
1066 approval.

1067 (b) If the sentence of an enlisted member who is reduced in pay grade under subsection  
1068 (a) of this Code section is set aside or disapproved, or, as finally approved, does not include  
1069 any punishment named in paragraphs (1) and (2) of subsection (a) of this Code section, the  
1070 rights and privileges of which the person was deprived because of that reduction shall be  
1071 restored, including, but not limited to, pay and allowances.

1072 38-2-1058.2.

1073 (a)(1) A court-martial sentence as provided for in paragraph (2) of this subsection shall  
1074 result in the forfeiture of pay, or of pay and allowances, due that member during any  
1075 period of confinement or parole. Such forfeiture pursuant to this Code section shall take



1076 effect on the date determined under Code Section 38-2-1057 and may be deferred as  
1077 provided by that Code section. The pay and allowances forfeited shall be all pay and  
1078 allowances due that member during such period.

1079 (2) A sentence covered by this subsection shall be any sentence that includes:

1080 (A) Confinement for more than six months; or

1081 (B) Confinement for six months or less and a dishonorable or bad conduct discharge  
1082 or dismissal.

1083 (b) In a case involving an accused who has dependents, the convening authority or other  
1084 person acting under Code Section 38-2-1060 may waive any or all of the forfeitures of pay  
1085 and allowances required by subsection (a) of this Code section for a period not to exceed  
1086 six months. Any amount of pay or allowances that, except for a waiver under this  
1087 subsection, would be forfeited shall be paid, as the convening authority or other person  
1088 taking action directs, to the dependents of the accused.

1089 (c) If the sentence of a member who forfeits pay and allowances under subsection (a) of  
1090 this Code section is set aside or disapproved or, as finally approved, does not provide for  
1091 a punishment referred to in paragraph (2) of subsection (a) of this Code section, the  
1092 member shall be paid the pay and allowances which the member would have been paid,  
1093 except for the forfeiture, for the period during which the forfeiture was in effect.

1094 Part 9

1095 38-2-1059.

1096 (a) A finding or sentence of a court-martial shall not be held incorrect on the ground of an  
1097 error of law unless the error materially prejudices the substantial rights of the accused.

1098 (b) Any reviewing authority with the power to approve or affirm a finding of guilty may  
1099 approve or affirm, instead, so much of the finding as includes a lesser included offense.

1100 38-2-1060.

1101 (a) The findings and sentence of a court-martial shall be reported promptly to the  
1102 convening authority after the announcement of the sentence.

1103 (b)(1) The accused may submit to the convening authority matters for consideration by  
1104 the convening authority with respect to the findings and the sentence. Any such  
1105 submission shall be in writing. Except in a summary court-martial case, such a  
1106 submission shall be made within 30 days after the accused has been given an  
1107 authenticated record of the trial and, if applicable, the recommendation of the staff judge  
1108 advocate of the service of the accused under subsection (d) of this Code section. In a

1109 summary court-martial case, such a submission shall be made within 30 days after the  
1110 sentence is announced.

1111 (2) If the accused shows that additional time is required for the accused to submit such  
1112 matters as provided for in paragraph (1) of this subsection, the convening authority or  
1113 other person taking action under this Code section, for good cause, may extend the  
1114 applicable period under paragraph (1) of this subsection for not more than an additional  
1115 60 days.

1116 (3) In a summary court-martial case, the accused shall be promptly provided a copy of  
1117 the record of trial for use in preparing the submission as provided for by paragraph (1)  
1118 of this subsection.

1119 (4) The accused may waive the right to make a submission to the convening authority  
1120 as provided for by paragraph (1) of this subsection. Such a waiver shall be made in  
1121 writing and may not be revoked. For the purposes of paragraph (2) of subsection (c) of  
1122 this Code section, the time within which the accused may make a submission under this  
1123 subsection shall be deemed to have expired upon the submission of such a waiver to the  
1124 convening authority.

1125 (c)(1) The authority under this Code section to modify the findings and sentence of a  
1126 court-martial is a matter of command prerogative involving the sole discretion of the  
1127 convening authority. If it is impractical for the convening authority to act, the convening  
1128 authority shall forward the case to a person exercising general court-martial jurisdiction  
1129 who may take action under this Code section.

1130 (2) Action on the sentence of a court-martial shall be taken by the convening authority  
1131 or by another person authorized to act under this Code section. Such action may be taken  
1132 only after consideration of any matters submitted by the accused under subsection (b) of  
1133 this Code section or after the time for submitting such matters expires, whichever is  
1134 earlier. The convening authority or other person taking such action, in that person's sole  
1135 discretion, may approve, disapprove, commute, or suspend the sentence in whole or in  
1136 part.

1137 (3) Action on the findings of a court-martial by the convening authority or other person  
1138 acting on the sentence shall not be required; provided, however, that such person, in the  
1139 person's sole discretion may:

1140 (A) Dismiss any charge or specification by setting aside a finding of guilty thereto; or

1141 (B) Change a finding of guilty to a charge or specification to a finding of guilty to an  
1142 offense that is a lesser included offense of the offense stated in the charge or  
1143 specification.

1144 (d) Before acting under this Code section on any general or special court-martial case in  
1145 which there is a finding of guilt, the convening authority or other person taking action

1146 under this Code section shall obtain and consider the written recommendation of the staff  
 1147 judge advocate of the service of the accused. The convening authority or other person  
 1148 taking action under this Code section shall refer the record of trial to the staff judge  
 1149 advocate, and the staff judge advocate shall use such record in the preparation of the  
 1150 recommendation. The recommendation of the staff judge advocate shall include such  
 1151 matters as may be prescribed by regulations issued pursuant to Part 1 of Article 2 of this  
 1152 chapter and shall be served on the accused, who may submit any matter as provided for by  
 1153 subsection (b) of this Code section. Failure to object in the response to the  
 1154 recommendation or to any matter attached to the recommendation shall waive the right to  
 1155 object thereto.

1156 (e)(1) The convening authority or other person taking action under this Code section, in  
 1157 the person's sole discretion, may order a proceeding in revision or a rehearing.

1158 (2) A proceeding in revision as provided for by paragraph (1) of this subsection may be  
 1159 ordered if there is an apparent error or omission in the record or if the record shows  
 1160 improper or inconsistent action by a court-martial with respect to the findings or sentence  
 1161 that can be rectified without material prejudice to the substantial rights of the accused.

1162 In no case, however, may a proceeding in revision:

1163 (A) Reconsider a finding of not guilty of any specification or a ruling which amounts  
 1164 to a finding of not guilty;

1165 (B) Reconsider a finding of not guilty of any charge, unless there has been a finding  
 1166 of guilty under a specification laid under that charge, which sufficiently alleges a  
 1167 violation of this article; or

1168 (C) Increase the severity of the sentence unless the sentence prescribed for the offense  
 1169 is mandatory.

1170 (3) A rehearing may be ordered by the convening authority or other person taking action  
 1171 under this Code section if that person disapproves the findings and sentence and states  
 1172 the reasons for disapproval of the findings. If such person disapproves of the findings  
 1173 and sentence and does not order a rehearing, that person shall dismiss the charges. A  
 1174 rehearing as to the findings shall not be ordered where there is a lack of sufficient  
 1175 evidence in the record to support such findings. A rehearing as to the sentence shall be  
 1176 ordered if the convening authority or other person taking action under this subsection  
 1177 disapproves the sentence.

1178 38-2-1061.

1179 (a) In each case subject to appellate review under this article, the accused may file with the  
 1180 convening authority a statement expressly withdrawing the right of the accused to such

1181 appeal. Such a withdrawal shall be signed by both the accused and his or her defense  
 1182 counsel and shall be filed in accordance with appellate procedures as provided by law.

1183 (b) The accused may withdraw an appeal at any time in accordance with appellate  
 1184 procedures as provided by law.

1185 38-2-1062.

1186 (a)(1) In a trial by court-martial in which a punitive discharge may be adjudged, the state  
 1187 may appeal the following, other than a finding of not guilty with respect to the charge or  
 1188 specification by the members of the court-martial or by a judge in a bench trial so long  
 1189 as it is not made in reconsideration:

1190 (A) An order or ruling of the military judge which terminates the proceedings with  
 1191 respect to a charge or specification;

1192 (B) An order or ruling which excludes evidence that is substantial proof of a fact  
 1193 material in the proceeding;

1194 (C) An order or ruling which directs the disclosure of classified information;

1195 (D) An order or ruling which imposes sanctions for nondisclosure of classified  
 1196 information;

1197 (E) A refusal of the military judge to issue a protective order sought by the state to  
 1198 prevent the disclosure of classified information; and

1199 (F) A refusal by the military judge to enforce an order described in subparagraph (E)  
 1200 of this paragraph that has previously been issued by appropriate authority.

1201 (2) An appeal of an order or ruling may not be taken unless the trial counsel provides the  
 1202 military judge with written notice of appeal from the order or ruling within 72 hours of  
 1203 the order or ruling. Such notice shall include a certification by the trial counsel that the  
 1204 appeal is not taken for the purpose of delay and, if the order or ruling appealed is one  
 1205 which excludes evidence, that the evidence excluded is substantial proof of a fact material  
 1206 in the proceeding.

1207 (3) An appeal under this Code section shall be diligently prosecuted as provided by law.

1208 (b) An appeal under this Code section shall be forwarded to the court prescribed in Code  
 1209 Section 38-2-1067. In ruling on an appeal under this Code section, such court may act only  
 1210 with respect to matters of law.

1211 (c) Any period of delay resulting from an appeal under this Code section shall be excluded  
 1212 in deciding any issue regarding denial of a speedy trial unless an appropriate authority  
 1213 determines that the appeal was filed solely for the purpose of delay with the knowledge that  
 1214 it was totally frivolous and without merit.

1215 38-2-1063.

1216 Each rehearing under this article shall take place before a court-martial composed of  
 1217 members who were not members of the court-martial which first heard the case. Upon a  
 1218 rehearing, the accused may not be tried for any offense of which the accused was found not  
 1219 guilty by the first court-martial, and no sentence in excess of or more severe than the  
 1220 original sentence may be approved, unless the sentence is based upon a finding of guilty  
 1221 of an offense not considered upon the merits in the original proceedings or unless the  
 1222 sentence prescribed for the offense is mandatory. If the sentence approved after the first  
 1223 court-martial was in accordance with a pretrial agreement and the accused at the rehearing  
 1224 changes a plea with respect to the charges or specifications upon which the pretrial  
 1225 agreement was based, or otherwise does not comply with the pretrial agreement, the  
 1226 approved sentence as to those charges or specifications may include any punishment not  
 1227 in excess of that lawfully adjudged at the first court-martial.

1228 38-2-1064.

1229 (a) Each general and special court-martial case in which there has been a finding of guilty  
 1230 shall be reviewed by the state judge advocate or his or her designee who shall be a judge  
 1231 advocate. The state judge advocate shall not review a case under this subsection if that  
 1232 person has acted in the same case as an accuser, investigating officer, member of the court,  
 1233 military judge, or counsel, or has otherwise acted on behalf of the prosecution or defense;  
 1234 the state judge advocate shall assign review of such case to a designee who shall not have  
 1235 acted in the same case as an accuser, investigating officer, member of the court, military  
 1236 judge, or counsel, or has otherwise acted on behalf of the prosecution or defense. Such  
 1237 review of the state judge advocate or his or her designee shall be in writing and shall  
 1238 contain the following:

1239 (1) Conclusions as to whether:

1240 (A) The court had jurisdiction over the accused and the offense;

1241 (B) The charge and specification stated an offense; and

1242 (C) The sentence was within the limits prescribed as a matter of law;

1243 (2) A response to each allegation of error made in writing by the accused; and

1244 (3) If the case is sent for action under subsection (b) of this Code section, a  
 1245 recommendation as to the appropriate action to be taken and an opinion as to whether  
 1246 corrective action is required as a matter of law.

1247 (b) The record of trial and related documents in each case reviewed under subsection (a)  
 1248 of this Code section shall be sent for action to the adjutant general, if:

1249 (1) The judge advocate who reviewed the case recommends corrective action;

1250 (2) The sentence approved under Code Section 38-2-1060 extends to dismissal, a bad  
 1251 conduct or dishonorable discharge, or confinement for more than six months; or  
 1252 (3) Such action is otherwise required by regulations pursuant to Part 1 of Article 2 of this  
 1253 chapter.

1254 (c)(1) If a record of trial is sent to the adjutant general under subsection (b) of this Code  
 1255 section, the adjutant general may:

1256 (A) Disapprove or approve the findings or sentence, in whole or in part;  
 1257 (B) Remit, commute, or suspend the sentence in whole or in part;  
 1258 (C) Except where the evidence was insufficient at the trial to support the findings,  
 1259 order a rehearing on the findings or on the sentence, or both; or  
 1260 (D) Dismiss the charges.

1261 (2) If a rehearing is ordered by the adjutant general but the convening authority finds a  
 1262 rehearing impracticable, the convening authority shall dismiss the charges.

1263 (3) If the opinion of the state judge advocate, or designee, in the state judge advocate's,  
 1264 or designee's, review under subsection (a) of this Code section is that corrective action  
 1265 is required as a matter of law and if the adjutant general does not take action that is at  
 1266 least as favorable to the accused as that recommended by the state judge advocate, the  
 1267 record of trial and action thereon shall be sent to the Governor for review and action as  
 1268 deemed appropriate.

1269 (d) The state judge advocate, or his or her designee who shall be a judge advocate, may  
 1270 review any case in which there has been a finding of not guilty of all charges and  
 1271 specifications. If the state judge advocate has acted in the same case as an accuser,  
 1272 investigating officer, member of the court, military judge, or counsel or has otherwise acted  
 1273 on behalf of the prosecution or defense, the state judge advocate may assign such case to  
 1274 a designee who has not acted in the same case as an accuser, investigating officer, member  
 1275 of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution  
 1276 or defense and who shall determine whether a review shall be conducted under this  
 1277 subsection. Such review of the state judge advocate or of his or her designee shall be  
 1278 limited to questions of subject matter jurisdiction.

1279 (e) The record of trial and related documents in each case reviewed under subsection (d)  
 1280 of this Code section shall be sent for action to the adjutant general; the adjutant general  
 1281 may:

1282 (1) When subject matter jurisdiction is found to be lacking, void the court-martial ab  
 1283 initio, with or without prejudice to the state, as the adjutant general deems appropriate;  
 1284 or

1285 (2) Return the record of trial and related documents to the state judge advocate or his or  
 1286 her designee for appeal by the state as provided by law.

1287 38-2-1065.

1288 Except as otherwise required by this article, all records of trial and related documents shall  
 1289 be transmitted and disposed of as prescribed by regulations issued pursuant to Part 1 of  
 1290 Article 2 of this chapter.

1291 38-2-1066.

1292 Reserved.

1293 38-2-1067.

1294 (a)(1) There shall be the court-martial review panel which shall hear appeals of decisions  
 1295 of a court-martial.

1296 (2) The Governor shall appoint five persons to serve as judges on the court-martial  
 1297 review panel. Four such judges shall be retired commissioned officers of the organized  
 1298 militia or state military force of another state or of the armed forces of the United States  
 1299 or a reserve component thereof and a member in good standing of the State Bar of  
 1300 Georgia. One such judge shall be a member in good standing of the State Bar of Georgia  
 1301 and shall not be a member, former member, or retired member of the organized militia  
 1302 or state military force of another state or of the armed forces of the United States or a  
 1303 reserve component thereof.

1304 (3) The Governor shall prescribe by regulations issued pursuant to Part 1 of Article 2 of  
 1305 this chapter the convening and administration of the court-martial review panel and the  
 1306 compensation provided to the judges of such panel.

1307 (b)(1) An appeal to the court-martial review panel shall only be made after action on the  
 1308 sentence of a court-martial by the convening authority or by another person authorized  
 1309 to take such action as provided for in Code Section 38-2-1060 or after a decision of the  
 1310 convening authority to deny a petition for a new trial as provided for by Code Section  
 1311 38-2-1073 or pursuant to Code Section 38-2-1062. Such appeals shall be made within  
 1312 30 days after such action or decision.

1313 (2) The court-martial review panel shall dispose of each appeal within 90 days of such  
 1314 appeal made thereto. The court-martial review panel shall deliver its decision to the state  
 1315 judge advocate and, within three days, the state judge advocate shall serve a copy of such  
 1316 decision to the accused by statutory overnight delivery. The decision of the court-martial  
 1317 review panel shall be final for purposes of an appeal to the appellate courts of this state  
 1318 on the date that the state judge advocate mails the decision to the accused.

1319 (c) Any party to a proceeding before the court-martial review panel may secure a review  
 1320 of the final decision of the court-martial review panel by appeal in the manner and form  
 1321 provided by law for appeals from the superior courts to the appellate courts of this state.

1322 38-2-1068.

1323 Reserved.

1324 38-2-1069.

1325 Reserved.

1326 38-2-1070.

1327 (a) The state judge advocate shall detail a judge advocate as appellate government counsel  
1328 to represent the state in the review or appeal of cases provided for in Code Section  
1329 38-2-1067 and before any federal court when requested to do so by the attorney general.  
1330 Appellate government counsel shall be a member in good standing of the bar of the highest  
1331 court of this state.

1332 (b) Upon an appeal by the state, the accused shall have the right to be represented by  
1333 detailed military counsel before any reviewing authority and before any appellate court.

1334 (c) Upon an appeal by an accused, the accused shall have the right to be represented by  
1335 military counsel before any reviewing authority.

1336 (d) Upon the request of an accused entitled to be so represented, the senior force judge  
1337 advocate shall appoint a judge advocate to represent the accused in the review or appeal  
1338 of cases specified in subsections (b) and (c) of this Code section.

1339 (e) An accused may be represented by civilian appellate counsel at no expense to the state.

1340 38-2-1071.

1341 (a) If the sentence of the court-martial extends to dismissal or a dishonorable or bad  
1342 conduct discharge and if the right of the accused to appellate review is not waived and an  
1343 appeal is not withdrawn under Code Section 38-2-1061, that part of the sentence extending  
1344 to dismissal or a dishonorable or bad conduct discharge shall not be executed until there  
1345 is a final judgment as to the legality of the proceedings. A judgment as to the legality of  
1346 the proceedings shall be final in such cases when review is completed by an appellate court  
1347 as provided for in Code Section 38-2-1067 and is deemed final by the law of this state.

1348 (b) If the sentence of the court-martial extends to dismissal or a dishonorable or bad  
1349 conduct discharge and if the right of the accused to appellate review is waived or an appeal  
1350 is withdrawn under Code Section 38-2-1061, that part of the sentence extending to  
1351 dismissal or a dishonorable or bad conduct discharge shall not be executed until review of  
1352 the case by the state judge advocate and any action on that review under Code Section  
1353 38-2-1064 is completed. Any other part of a court-martial sentence may be ordered  
1354 executed by the convening authority or other person acting on the case under Code Section  
1355 38-2-1060 when so approved under that Code section.



1356 (c) The convening authority may suspend the execution of any sentence or part thereof.

1357 38-2-1072.

1358 (a) Before the vacation of the suspension of a special court-martial sentence, which as  
1359 approved includes a bad conduct discharge, or of any general court-martial sentence, the  
1360 officer having special court-martial jurisdiction over the probationer shall hold a hearing  
1361 on an alleged violation of probation. The probationer shall be represented at the hearing  
1362 by military counsel if the probationer so desires.

1363 (b) The record of the hearing and the recommendation of the officer having special  
1364 court-martial jurisdiction shall be sent for action to the officer exercising general  
1365 court-martial jurisdiction over the probationer. If the officer vacates the suspension, any  
1366 unexecuted part of the sentence, except a dismissal, shall be executed subject to applicable  
1367 restrictions in this article.

1368 (c) The suspension of any other sentence may be vacated by any authority competent to  
1369 convene for the command in which the accused is serving or assigned a court of the kind  
1370 that imposed the sentence.

1371 38-2-1073.

1372 (a) At any time within five years after approval by the convening authority of a  
1373 court-martial sentence, the accused may petition the convening authority for a new trial.  
1374 Some good reason, including but not limited to newly discovered evidence or fraud on the  
1375 court-martial, must be shown as to why the petition should be granted.

1376 (b) The decision of the convening authority provided for under subsection (a) of this Code  
1377 section shall be appealable as provided for under Code Section 38-2-1067.

1378 38-2-1074.

1379 (a) Any authority competent to convene, for the command in which the accused is serving  
1380 or assigned, a court of the kind that imposed the sentence may remit or suspend any part  
1381 or amount of the unexecuted part of any sentence, including, but not limited to, all  
1382 uncollected forfeitures, other than a sentence approved by the Governor.

1383 (b) The Governor may, for good cause, substitute an administrative form of discharge for  
1384 a discharge or dismissal executed in accordance with the sentence of a court-martial.

1385 38-2-1075.

1386 (a) Under such regulations as may be prescribed pursuant to this chapter, all rights,  
1387 privileges, and property affected by an executed part of a court-martial sentence which has  
1388 been set aside or disapproved, except an executed dismissal or discharge, shall be restored

1389 unless a new trial or rehearing is ordered and such executed part is included in a sentence  
1390 imposed upon the new trial or rehearing.

1391 (b) If a previously executed sentence of dishonorable or bad conduct discharge is not  
1392 imposed on a new trial, the Governor may substitute therefor a form of discharge  
1393 authorized for administrative issuance unless the accused is to serve out the remainder of  
1394 the accused's enlistment.

1395 (c) If a previously executed sentence of dismissal is not imposed on a new trial, the  
1396 Governor may substitute therefor a form of discharge authorized for administrative issue,  
1397 and the commissioned officer dismissed by that sentence may be reappointed by the  
1398 Governor to such commissioned grade and with such rank as in the opinion of the  
1399 Governor that former officer would have attained had the former officer not been  
1400 dismissed. The reappointment of such a former officer shall be without regard to the  
1401 existence of a vacancy and shall affect the promotion status of other officers only insofar  
1402 as the Governor may direct. All time between the dismissal and the reappointment shall  
1403 be considered as actual service for all purposes, including, but not limited to, the right to  
1404 pay and allowances.

1405 38-2-1076.

1406 The appellate review of records of trial provided by this article, the proceedings, findings,  
1407 and sentences of courts-martial as approved, reviewed, or affirmed as required by this  
1408 article, and all dismissals and discharges carried into execution under sentences by  
1409 courts-martial following approval, review, or affirmation as required by this article shall  
1410 be final and conclusive. Orders publishing the proceedings of courts-martial and all action  
1411 taken pursuant to those proceedings shall be binding upon all departments, courts, agencies,  
1412 and officers of the United States and officers of another state subject only to action upon  
1413 a petition for a new trial as provided in Code Section 38-2-1073 and to action under Code  
1414 Section 38-2-1074.

1415 38-2-1076.1.

1416 Under regulations prescribed pursuant to Part 1 of Article 2 of this chapter, an accused who  
1417 has been sentenced by a court-martial shall be required to take leave pending completion  
1418 of action under this Code section if the sentence as approved under Code Section  
1419 38-2-1060 includes an unsuspended dismissal or an unsuspended dishonorable or bad  
1420 conduct discharge. The accused shall be required to begin such leave on the date on which  
1421 the sentence is approved under Code Section 38-2-1060 or at any time after such date, and  
1422 such leave shall be continued until the date on which action under this Code section is  
1423 completed or may be terminated at any earlier time.

Part 10

1424

1425 38-2-1077.1426 Any person subject to this article who:1427 (1) Commits an offense punishable by this article or aids, abets, counsels, commands,  
1428 or procures its commission; or1429 (2) Causes an act to be done which if directly performed by that person would be  
1430 punishable by this article1431 is a principal.1432 38-2-1078.1433 Any person subject to this article who, knowing that an offense punishable by this article  
1434 has been committed, receives, comforts, or assists the offender in order to hinder or prevent  
1435 his or her apprehension, trial, or punishment shall be punished as a court-martial may  
1436 direct.1437 38-2-1079.1438 An accused may be found guilty of an offense necessarily included in the offense charged  
1439 or of an attempt to commit either the offense charged or an offense necessarily included  
1440 therein.1441 38-2-1080.1442 (a) An act, done with specific intent to commit an offense under this article, amounting to  
1443 more than mere preparation and tending, even though failing, to effect its commission is  
1444 an attempt to commit that offense.1445 (b) Any person subject to this article who attempts to commit any offense punishable by  
1446 this article shall be punished as a court-martial may direct, unless otherwise specifically  
1447 prescribed.1448 (c) Any person subject to this article may be convicted of an attempt to commit an offense  
1449 although it appears on the trial that the offense was consummated.1450 38-2-1081.1451 Any person subject to this article who conspires with any other person to commit an  
1452 offense under this article shall, if one or more of the conspirators does an act to effect the  
1453 object of the conspiracy, be punished as a court-martial may direct.

1454 38-2-1082.

1455 (a) Any person subject to this article who solicits or advises another or others to desert in  
 1456 violation of Code Section 38-2-1085 or mutiny in violation of Code Section 38-2-1094  
 1457 shall, if the offense solicited or advised is attempted or committed, be punished with the  
 1458 punishment provided for the commission of the offense; but, if the offense solicited or  
 1459 advised is not committed or attempted, the person shall be punished as a court-martial may  
 1460 direct.

1461 (b) Any person subject to this article who solicits or advises another or others to commit  
 1462 an act of misbehavior before the enemy in violation of Code Section 38-2-1099 or sedition  
 1463 in violation of Code Section 38-2-1094 shall, if the offense solicited or advised is  
 1464 committed, be punished with the punishment provided for the commission of the offense;  
 1465 but, if the offense solicited or advised is not committed, the person shall be punished as a  
 1466 court-martial may direct.

1467 38-2-1083.

1468 Any person who:

1469 (1) Procures his or her own enlistment or appointment in the organized militia by  
 1470 knowingly false representation or deliberate concealment as to his or her qualifications  
 1471 for that enlistment or appointment and receives pay or allowances thereunder; or  
 1472 (2) Procures his or her own separation from the organized militia by knowingly false  
 1473 representation or deliberate concealment as to his or her eligibility for that separation  
 1474 shall be punished as a court-martial may direct.

1475 38-2-1084.

1476 Any person subject to this article who effects an enlistment or appointment in or a  
 1477 separation from the organized militia of any person who is known to him or her to be  
 1478 ineligible for that enlistment, appointment, or separation because it is prohibited by law,  
 1479 regulation, or order shall be punished as a court-martial may direct.

1480 38-2-1085.

1481 (a) Any member of the organized militia shall be guilty of desertion who:

1482 (1) Without authority goes or remains absent from his or her unit, organization, or place  
 1483 of duty with intent to remain away therefrom permanently;  
 1484 (2) Quits his or her unit, organization, or place of duty with intent to avoid hazardous  
 1485 duty or to shirk important service; or  
 1486 (3) Without being regularly separated from the organized militia, enlists or accepts  
 1487 another appointment in the organized militia, or in one of the armed forces of the United

1488 States, without fully disclosing the fact that the member has not been regularly separated,  
1489 or enters any foreign armed service except when authorized by the United States.

1490 (b) Any commissioned officer of the organized militia who, after tender of his or her  
1491 resignation and before notice of its acceptance, quits his or her post or proper duties  
1492 without leave and with intent to remain away therefrom permanently shall be guilty of  
1493 desertion.

1494 (c) Any person found guilty of desertion or attempt to desert shall be punished by:

1495 (1) Confinement of not more than ten years or such other punishment as a court-martial  
1496 may direct if the offense is committed in time of war; or

1497 (2) Punishment as a court-martial may direct if the offense occurs at any time other than  
1498 in time of war.

1499 38-2-1086.

1500 Any person subject to this article shall be punished as a court-martial may direct who,  
1501 without authority:

1502 (1) Fails to go to his or her appointed place of duty at the time prescribed;

1503 (2) Goes from his or her place of duty; or

1504 (3) Absents himself or herself or remains absent from his or her unit, organization, or  
1505 place of duty at which the person is required to be at the time prescribed.

1506 38-2-1087.

1507 Any person subject to this article who through neglect or design misses the movement of  
1508 a ship, aircraft, or unit with which the person is required in the course of duty to move shall  
1509 be punished as a court-martial may direct.

1510 38-2-1088.

1511 Any commissioned officer who uses contemptuous words against the President, the Vice  
1512 President, Congress, the Secretary of Defense, the secretary of a military department, the  
1513 Secretary of Homeland Security, or the Governor or General Assembly shall be punished  
1514 as a court-martial may direct.

1515 38-2-1089.

1516 Any person subject to this article who behaves with disrespect toward his or her superior  
1517 commissioned officer shall be punished as a court-martial may direct.

1518 38-2-1090.

1519 Any person subject to this article who:

1520 (1) Strikes his or her superior commissioned officer or draws or lifts up any weapon or  
 1521 offers any violence against said superior commissioned officer while he or she is in the  
 1522 execution of his or her office; or

1523 (2) Willfully disobeys a lawful command of his or her superior commissioned officer  
 1524 shall be punished, if the offense is committed in time of war, by confinement of not more  
 1525 than ten years or such other punishment as a court-martial may direct, or if the offense is  
 1526 committed at any time other than a time of war, by such punishment as a court-martial may  
 1527 direct.

1528 38-2-1091.

1529 Any warrant officer or enlisted member shall be punished as a court-martial may direct  
 1530 who:

1531 (1) Strikes or assaults a warrant officer, noncommissioned officer, or petty officer while  
 1532 that officer is in the execution of his or her office;

1533 (2) Willfully disobeys the lawful order of a warrant officer, noncommissioned officer,  
 1534 or petty officer; or

1535 (3) Treats with contempt or is disrespectful in language or deportment toward a warrant  
 1536 officer, noncommissioned officer, or petty officer while that officer is in the execution  
 1537 of his or her office.

1538 38-2-1092.

1539 Any person subject to this article shall be punished as a court-martial may direct who:

1540 (1) Violates or fails to obey any lawful general order or regulation;

1541 (2) Having knowledge of any other lawful order issued by a member of the organized  
 1542 militia, which it is his or her duty to obey, fails to obey the order; or

1543 (3) Is derelict in the performance of his or her duties.

1544 38-2-1093.

1545 Any person subject to this article who is guilty of cruelty toward, or oppression or  
 1546 maltreatment of, any person subject to his or her orders shall be punished as a court-martial  
 1547 may direct.

1548 38-2-1094.

1549 (a) Any person subject to this article who:

1550 (1) With intent to usurp or override lawful military authority, refuses, in concert with any  
 1551 other person, to obey orders or otherwise do his or her duty or creates any violence or  
 1552 disturbance shall be guilty of mutiny;

1553 (2) With intent to cause the overthrow or destruction of lawful civil authority, creates,  
 1554 in concert with any other person, revolt, violence, or other disturbance against that  
 1555 authority shall be guilty of sedition; or

1556 (3) Fails to do his or her utmost to prevent and suppress a mutiny or sedition being  
 1557 committed in his or her presence, or fails to take all reasonable means to inform his or her  
 1558 superior commissioned officer or commanding officer of a mutiny or sedition which the  
 1559 person knows or has reason to believe is taking place, shall be guilty of a failure to  
 1560 suppress or report a mutiny or sedition.

1561 (b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to  
 1562 suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

1563 38-2-1095.

1564 Any person subject to this article shall be punished as a court-martial may direct who:

1565 (1) Resists apprehension;

1566 (2) Flees from apprehension;

1567 (3) Breaks arrest; or

1568 (4) Escapes from custody or confinement.

1569 38-2-1096.

1570 Any person subject to this article who, without proper authority, releases any prisoner  
 1571 committed to his or her charge, or who through neglect or design suffers any such prisoner  
 1572 to escape, shall be punished as a court-martial may direct, whether or not the prisoner was  
 1573 committed in strict compliance with law.

1574 38-2-1097.

1575 Any person subject to this article who, except as provided by law or regulation,  
 1576 apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

1577 38-2-1098.

1578 Any person subject to this article shall be punished as a court-martial may direct who:

1579 (1) Is responsible for unnecessary delay in the disposition of any case of a person  
 1580 accused of an offense under this article; or

1581 (2) Knowingly and intentionally fails to enforce or comply with any provision of this  
 1582 article regulating the proceedings before, during, or after trial of an accused.

1583 38-2-1099.

1584 Any person subject to this article shall be punished as a court-martial may direct who  
 1585 before or in the presence of the enemy:

1586 (1) Runs away;

1587 (2) Shamefully abandons, surrenders, or delivers up any command, unit, place, or  
 1588 military property which it is his or her duty to defend;

1589 (3) Through disobedience, neglect, or intentional misconduct endangers the safety of any  
 1590 such command, unit, place, or military property;

1591 (4) Casts away his or her arms or ammunition;

1592 (5) Is guilty of cowardly conduct;

1593 (6) Quits his or her place of duty to plunder or pillage;

1594 (7) Causes false alarms in any command, unit, or place under control of the armed forces  
 1595 of the United States or the organized militia;

1596 (8) Willfully fails to do his or her utmost to encounter, engage, capture, or destroy any  
 1597 enemy troops, combatants, vessels, aircraft, or any other thing which it is his or her duty  
 1598 so to encounter, engage, capture, or destroy; or

1599 (9) Does not afford all practicable relief and assistance to any troops, combatants,  
 1600 vessels, or aircraft of the armed forces belonging to the United States or their allies, to  
 1601 this state, or to another state, when engaged in battle.

1602 38-2-1100.

1603 Any person subject to this article who compels or attempts to compel a commander, an  
 1604 individual in command of the National Guard of another state, or an individual in command  
 1605 of a vessel, aircraft, or other military property or of any body of members of the armed  
 1606 forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an  
 1607 enemy without proper authority, shall be punished as a court-martial may direct.

1608 38-2-1101.

1609 Any person subject to this article who in time of war discloses the parole or countersign to  
 1610 any person not entitled to receive it or who gives to another, who is entitled to receive and  
 1611 use the parole or countersign, a different parole or countersign from that which, to his or  
 1612 her knowledge, the person was authorized and required to give, shall be punished as a  
 1613 court-martial may direct.

1614 38-2-1102.

1615 Any person subject to this article who forces a safeguard shall be punished as a  
 1616 court-martial may direct.



1617 38-2-1103.

1618 (a) All persons subject to this article shall secure all public property taken for the service  
1619 of the United States or this state or another state and shall give notice and turn over to the  
1620 proper authority without delay all captured or abandoned property in their possession,  
1621 custody, or control.

1622 (b) Any person subject to this article shall be punished as a court-martial may direct who:

1623 (1) Fails to carry out the duties prescribed in subsection (a);

1624 (2) Buys, sells, trades, or in any way deals in or disposes of taken, captured, or  
1625 abandoned property, whereby the person receives or expects any profit, benefit, or  
1626 advantage to himself or herself or another directly or indirectly connected with himself  
1627 or herself; or

1628 (3) Engages in looting or pillaging.

1629 38-2-1104.

1630 Any person subject to this article shall be punished as a court-martial may direct who:

1631 (1) Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other  
1632 things; or

1633 (2) Without proper authority, knowingly harbors or protects or gives intelligence to, or  
1634 communicates or corresponds with or holds any intercourse with the enemy, either  
1635 directly or indirectly.

1636 38-2-1105.

1637 Any person subject to this article shall be punished as a court-martial may direct who,  
1638 while in the hands of the enemy in time of war:

1639 (1) For the purpose of securing favorable treatment by his or her captors acts without  
1640 proper authority in a manner contrary to law, custom, or regulation to the detriment of  
1641 others of whatever nationality held by the enemy as civilian or military prisoners; or

1642 (2) While in a position of authority over such persons maltreats them without justifiable  
1643 cause.

1644 38-2-1106.

1645 Reserved.

1646 38-2-1107.

1647 Any person subject to this article who, with intent to deceive, signs any false record, return,  
1648 regulation, order, or other official document made in the line of duty, knowing it to be

1649 false, or makes any other false official statement made in the line of duty, knowing it to be  
 1650 false, shall be punished as a court-martial may direct.

1651 38-2-1108.

1652 Any person subject to this article shall be punished as a court-martial may direct who,  
 1653 without proper authority:

1654 (1) Takes, sells, or otherwise disposes of any military property of the United States or  
 1655 of another state;

1656 (2) Willfully or through neglect damages, destroys, or loses any military property of the  
 1657 United States or of another state; or

1658 (3) Willfully or through neglect suffers to be lost, damaged, destroyed, sold, or  
 1659 wrongfully disposed of any military property of the United States or of another state.

1660 38-2-1109.

1661 Any person subject to this article who willfully or recklessly wastes, spoils, or otherwise  
 1662 willfully and wrongfully takes, sells, destroys, or damages any property of another other  
 1663 than military property of the United States or of another state shall be punished as a  
 1664 court-martial may direct.

1665 38-2-1110.

1666 (a) Any person subject to this article who willfully and wrongfully hazards or suffers to  
 1667 be hazarded any vessel of the armed forces of the United States or any organized militia  
 1668 shall be punished as a court-martial may direct.

1669 (b) Any person subject to this article who negligently hazards or suffers to be hazarded any  
 1670 vessel of the armed forces of the United States or the organized militia shall be punished  
 1671 as a court-martial may direct.

1672 38-2-1111.

1673 Any person subject to this article shall be punished as a court-martial may direct who:

1674 (1) Drives, operates, or physically controls any vehicle, aircraft, or vessel in a reckless  
 1675 or wanton manner or while impaired by a substance as described in subsection (b) of  
 1676 Code Section 38-2-1112.1; or

1677 (2) Drives, operates, or is in actual physical control of any vehicle, aircraft or vessel  
 1678 while drunk or when the alcohol concentration in the person's blood is equal to or exceeds  
 1679 0.08 grams of alcohol per 100 milliliters of blood, as shown by chemical analysis, within  
 1680 three hours after such operation or control, or the person's breath is equal to or exceeds

1681 0.08 grams of alcohol per 210 liters of breath, as shown by chemical analysis, within  
1682 three hours after such operation or control.

1683 38-2-1112.

1684 Any person subject to this article, other than a sentinel or lookout, who is found under the  
1685 influence of alcohol sufficient to impair the rational and full exercise of his or her mental  
1686 or physical faculties on duty shall be punished as a court-martial may direct.

1687 38-2-1112.1.

1688 (a) Any person subject to this article who wrongfully uses, possesses, manufactures,  
1689 distributes, imports into the customs territory of the United States, exports from the United  
1690 States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the  
1691 control of the armed forces of the United States or of the organized militia a substance  
1692 described in subsection (b) of this Code section shall be punished as a court-martial may  
1693 direct.

1694 (b) The substances provided for by subsection (a) of this Code section shall be:

1695 (1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide,  
1696 methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or  
1697 derivative of any such substance;

1698 (2) Any substance not specified in paragraph (1) of this subsection that is listed on a  
1699 schedule of controlled substances prescribed by the President for the purposes of the  
1700 Uniform Code of Military Justice of the armed forces of the United States, 10 U.S.C.  
1701 Section 801 et seq.; and

1702 (3) Any other substance not specified in paragraph (1) of this subsection or contained on  
1703 a list prescribed by the President under paragraph (2) of this subsection that is listed in  
1704 schedules I through V of the Controlled Substances Act, 21 U.S.C. Section 812.

1705 38-2-1113.

1706 Any sentinel or lookout who is found under the influence of alcohol sufficient to impair the  
1707 rational and full exercise of his or her mental or physical faculties or sleeping upon his or  
1708 her post or leaves it before being regularly relieved shall be punished, if the offense is  
1709 committed in time of war, by confinement of not more than ten years or other punishment  
1710 as a court-martial may direct, but if the offense is committed at any time other than in time  
1711 of war, by such punishment as a court-martial may direct.

1712 38-2-1114.

1713 Reserved.

1714 38-2-1115.

1715 Any person subject to this article shall be punished as a court-martial may direct who for  
1716 the purpose of avoiding work, duty, or service:

1717 (1) Feigns illness, physical disablement, mental lapse, or derangement; or

1718 (2) Intentionally inflicts self-injury.

1719 38-2-1116.

1720 Any person subject to this article who causes or participates in any riot or breach of the  
1721 peace shall be punished as a court-martial may direct.

1722 38-2-1117.

1723 Any person subject to this article who uses provoking or reproachful words or gestures  
1724 toward any other person subject to this article shall be punished as a court-martial may  
1725 direct.

1726 38-2-1118.

1727 Reserved.

1728 38-2-1119.

1729 Reserved.

1730 38-2-1120.

1731 Reserved.

1732 38-2-1121.

1733 Reserved.

1734 38-2-1122.

1735 Reserved.

1736 38-2-1123.

1737 Reserved.

1738 38-2-1124.

1739 Reserved.

1740 38-2-1125.

1741 Reserved.

1742 38-2-1126.

1743 Reserved.

1744 38-2-1127.

1745 Reserved.

1746 38-2-1128.

1747 Reserved.

1748 38-2-1129.

1749 Reserved.

1750 38-2-1130.

1751 Reserved.

1752 38-2-1131.

1753 Any person subject to this article is guilty of perjury and shall be punished as a  
 1754 court-martial may direct who in a judicial proceeding or in a course of justice willfully and  
 1755 corruptly:

1756 (1) Upon a lawful oath or in any form allowed by law to be substituted for an oath, gives  
 1757 any false testimony material to the issue or matter of inquiry; or

1758 (2) In any declaration, certificate, verification, or statement under penalty of perjury,  
 1759 subscribes any false statement material to the issue or matter of inquiry.

1760 38-2-1132.

1761 Any person subject to this article shall, upon conviction, be punished as a court-martial  
 1762 may direct:

1763 (1) Who, knowing it to be false or fraudulent:

1764 (A) Makes any claim against the United States, this state, or any officer thereof; or

1765 (B) Presents to any person in the civil or military service thereof, for approval or  
 1766 payment, any claim against the United States, this state, or any officer thereof;

1767 (2) Who, for the purpose of obtaining the approval, allowance, or payment of any claim  
 1768 against the United States, this state, or any officer thereof:

1769 (A) Makes or uses any writing or other paper or electronic submission knowing it to  
 1770 contain any false or fraudulent statements;

1771 (B) Makes any oath, affirmation, or certification to any fact or to any writing or other  
 1772 paper or electronic submission knowing the oath, affirmation, or certification to be  
 1773 false; or

1774 (C) Forges or counterfeits any signature upon any writing or other paper, or uses any  
 1775 such signature knowing it to be forged or counterfeited;

1776 (3) Who, having charge, possession, custody, or control of any money or other property  
 1777 of the United States or this state, furnished or intended for the armed forces of the United  
 1778 States or the organized militia, knowingly delivers to any person having authority to  
 1779 receive it, any amount thereof less than that for which the person receives a certificate or  
 1780 receipt; or

1781 (4) Who, being authorized to make or deliver any paper certifying the receipt of any  
 1782 property of the United States or this state, furnished or intended for the armed forces of  
 1783 the United States or the organized militia, makes or delivers to any person such writing  
 1784 without having full knowledge of the truth of the statements therein contained and with  
 1785 intent to defraud the United States or this state.

1786 38-2-1133.

1787 Any commissioned officer, cadet, candidate, or midshipman who is convicted of conduct  
 1788 unbecoming an officer shall be punished as a court-martial may direct.

1789 38-2-1134.

1790 Though not specifically mentioned in this article, all disorders and neglects to the prejudice  
 1791 of good order and discipline in the organized militia and all conduct of a nature to bring  
 1792 discredit upon the organized militia shall be taken cognizance of by a court-martial and  
 1793 punished at the discretion of a military court. However, where a crime constitutes an  
 1794 offense that violates both this article and the criminal laws of the state where the offense  
 1795 occurs or criminal laws of the United States, jurisdiction of the military court shall be  
 1796 determined in accordance with subsection (b) of Code Section 38-2-1002.

1797 Part 11

1798 38-2-1135.

1799 (a) Courts of inquiry to investigate any matter of concern to the organized militia may be  
 1800 convened by any person authorized to convene a general court-martial, whether or not the  
 1801 persons involved have requested such an inquiry.

1802 (b) A court of inquiry shall consist of three or more commissioned officers. For each court  
 1803 of inquiry, the convening authority shall also appoint counsel for the court.

1804 (c) Any person subject to this article whose conduct is subject to inquiry shall be  
 1805 designated as a party. Any person subject to this article who has a direct interest in the  
 1806 subject of inquiry has the right to be designated as a party upon request to the court. Any  
 1807 person designated as a party shall be given due notice and has the right to be present, to be  
 1808 represented by counsel, to cross-examine witnesses, and to introduce evidence.

1809 (d) Members of a court of inquiry may be challenged by a party, but only for cause stated  
 1810 to the court.

1811 (e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an  
 1812 oath to faithfully perform their duties.

1813 (f) Witnesses may be summoned to appear and testify and be examined before courts of  
 1814 inquiry as provided for courts-martial.

1815 (g) Courts of inquiry shall make findings of fact but shall not express opinions or make  
 1816 recommendations unless required to do so by the convening authority.

1817 (h) Each court of inquiry shall keep a record of its proceedings, which shall be  
 1818 authenticated by the signatures of the president and counsel for the court and forwarded to  
 1819 the convening authority. If the record cannot be authenticated by the president, it shall be  
 1820 signed by a member in lieu of the president. If the record cannot be authenticated by the  
 1821 counsel for the court, it shall be signed by a member in lieu of the counsel.

1822 38-2-1136.

1823 (a) The following persons shall have the power to administer oaths for the purposes of  
 1824 military administration, including military justice:

1825 (1) All judge advocates;

1826 (2) All summary courts-martial;

1827 (3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;

1828 (4) All commanding officers of the naval militia; and

1829 (5) All other persons designated by regulations of the armed forces of the United States  
 1830 or by law.

1831 (b) The following persons shall have the power to administer oaths necessary in the  
 1832 performance of their duties:

1833 (1) The president, military judge, and trial counsel for all general and special  
 1834 courts-martial;

1835 (2) The president and the counsel for the court of any court of inquiry;

1836 (3) All officers designated to take a deposition;

1837 (4) All persons detailed to conduct an investigation;

1838 (5) All recruiting officers; and  
 1839 (6) All other persons designated by regulations of the armed forces of the United States  
 1840 or by law.

1841 (c) The signature without seal of any such person provided for by subsections (a) and (b)  
 1842 of this Code section, together with the title of his or her office, is prima facie evidence of  
 1843 the person's authority.

1844 38-2-1136.1.

1845 (a) Military judges may appoint and, at any time, remove one or more marshals who shall  
 1846 execute any process, mandate, or order issued by the judge and shall perform all acts and  
 1847 duties by this chapter imposed on or authorized to be performed by any sheriff as defined  
 1848 in Code Section 15-16-10.

1849 (b) All such marshals shall be deemed peace officers and for the purposes of this article  
 1850 shall have all the powers and immunities of peace officers.

1851 38-2-1137.

1852 (a)(1) The Code sections specified in paragraph (3) of this subsection shall be carefully  
 1853 explained to each enlisted member at the time of, or within 90 days after, the member's  
 1854 initial entrance into a duty status with the organized militia.

1855 (2) Such articles as provided for by paragraph (1) of this subsection shall be explained  
 1856 again:

1857 (A) After the member has completed basic or recruit training; and

1858 (B) At the time when the member reenlists.

1859 (3) This subsection shall apply with respect to this Code section and Code Sections  
 1860 38-2-1002 through 38-2-1005, 38-2-1007 through 38-2-1014, 38-2-1015, 38-2-1025,  
 1861 38-2-1027, 38-2-1031, 38-2-1037, 38-2-1038, 38-2-1055, 38-2-1077 through 38-2-1134,  
 1862 38-2-1138, and 38-2-1139.

1863 (b) The text of this article and of the regulations prescribed hereunder shall be made  
 1864 available to a member of the organized militia, upon request by the member, for the  
 1865 member's personal examination.

1866 (c) Failure to provide the explanations of this article as provided for by this Code section  
 1867 shall not be a defense to a court-martial proceeding, the administration of nonjudicial  
 1868 punishment, or any other action.

1869 38-2-1138.

1870 Any member of the organized militia who believes himself or herself wronged by a  
 1871 commanding officer and who, upon due application to that commanding officer, is refused



1872 redress may complain to the assistant adjutant general for army, the assistant adjutant  
1873 general for air, or the brigadier general in charge of the State Defense Force, as applicable,  
1874 who shall forward the complaint to the senior force commander over the officer against  
1875 whom such complaint is made. The senior force commander shall examine into the  
1876 complaint and take proper measures for redressing the wrong complained of and shall, as  
1877 soon as possible, send to the adjutant general a true statement of such complaint with the  
1878 proceedings had thereon. Any complaint against a senior force commander shall be made  
1879 to the adjutant general who shall examine into the complaint and take proper measures for  
1880 redressing the wrong complained of.

1881 38-2-1138.1.

1882 (a) The adjutant general, assistant adjutant general for army, or assistant adjutant general  
1883 for air may issue to any member under his or her authority a state administrative letter of  
1884 reprimand.

1885 (b) A state administrative letter of reprimand shall not be filed in the member's federal  
1886 personnel records unless it meets the requirements for filing under the applicable  
1887 regulations or instructions of the affected member.

1888 (c) A state administrative letter of reprimand shall be included for consideration when  
1889 determining future assignments within the state for the affected member.

1890 (d) The member against whom a state administrative letter of reprimand is issued shall  
1891 have the same rights to review evidence and present a rebuttal as he or she would have if  
1892 the state administrative letter of reprimand were to be filed in his or her federal personnel  
1893 file.

1894 38-2-1139.

1895 (a) Whenever a complaint is made to any commanding officer that willful damage has  
1896 been done to the property of any person or that the person's property has been wrongfully  
1897 taken by members of the organized militia, such commanding officer may, under such  
1898 regulations prescribed pursuant to Part 1 of Article 2 of this chapter, convene a board to  
1899 investigate the complaint. The board shall consist of from one to three commissioned  
1900 officers and, for the purpose of that investigation, it has power to summon witnesses and  
1901 examine them upon oath, to receive depositions or other documentary evidence, and to  
1902 assess the damages sustained against the responsible parties. The assessment of damages  
1903 made by the board shall be subject to the approval of the commanding officer and, in the  
1904 amount approved by such commanding officer, shall be charged against the pay of the  
1905 offenders. The order of the commanding officer directing charges herein authorized shall

1906 be conclusive on any disbursing officer for payment to the injured parties of the damages  
 1907 so assessed and approved.

1908 (b) If the offenders cannot be ascertained but the organization or detachment to which they  
 1909 belong is known, charges totaling the amount of damages assessed and approved may be  
 1910 made in such proportion as may be considered just upon the individual members thereof  
 1911 who are shown to have been present at the scene at the time the damages complained of  
 1912 were inflicted, as determined by the approved findings of the board.

1913 38-2-1140.

1914 Except as provided in Code Section 38-2-1022, the Governor may delegate any authority  
 1915 vested in the Governor under this article and provide for the sub delegation of any such  
 1916 authority.

1917 38-2-1141.

1918 The fees and authorized travel expenses of all witnesses, experts, victims, court reporters,  
 1919 and interpreters, fees for the service of process, the costs of collection, apprehension,  
 1920 detention, and confinement, and all other necessary expenses of prosecution and the  
 1921 administration of military justice, not otherwise payable by any other source, shall be paid  
 1922 out of the military fund as described in Code Section 38-2-170.

1923 38-2-1142.

1924 (a) Fines collected as a result of being found in contempt shall be collected in the  
 1925 following manner:

1926 (1) By cash or money order;

1927 (2) By retention of any pay or allowances due or to become due to the person fined from  
 1928 another state or the United States; or

1929 (3) By garnishment or levy, together with costs, on the wages, goods, and chattels of a  
 1930 person delinquent in paying a fine, as provided by law.

1931 (b) Any sum so received or retained shall be deposited in the military justice fund as  
 1932 provided in Code Section 38-2-170.

1933 38-2-1143.

1934 This article shall be so construed as to effectuate its general purpose to make it uniform,  
 1935 so far as practical, with the Uniform Code of Military Justice, Chapter 47 of Title 10 of the  
 1936 United States Code.

1937 38-2-1144.

1938 All persons acting under the provisions of this article, whether as a member of the military  
1939 or as a civilian, shall be immune from any personal liability for any of the acts or omissions  
1940 which they did or failed to do as part of their duties under this article.

1941 38-2-1145.

1942 The provisions of this article are hereby declared to be severable, and if any provision of  
1943 this article or the application of such provision to any person or circumstance is declared  
1944 invalid for any reason, such declaration shall not affect the validity of the remaining  
1945 portions of this article."

1946

#### **SECTION 4.**

1947 This Act shall become effective on July 1, 2015, and shall apply to offenses which occur on  
1948 or after that date. Any offense occurring before July 1, 2015, shall be governed by the  
1949 statutes in effect at the time of such offense. The enactment of this Act shall not affect any  
1950 prosecutions for acts occurring before July 1, 2015, and shall not act as an abatement of any  
1951 such prosecutions.

1952

#### **SECTION 5.**

1953 All laws and parts of laws in conflict with this Act are repealed.